



**City and Borough of Wrangell
Borough Assembly Meeting
AGENDA
Revised as of 5-8-15 @ 1:30 p.m.**

May 12, 2015 – 7:00 p.m.

Location: Assembly Chambers, City Hall

1. CALL TO ORDER

- a. PLEDGE OF ALLEGIANCE led by Assembly Member Julie Decker
- b. INVOCATION to be given by a member of the Baha'i Faith
- c. CEREMONIAL MATTERS – *Community Presentations, Proclamations, Certificates of Service, Guest Introductions*

2. ROLL CALL

3. AMENDMENTS TO THE AGENDA

4. CONFLICT OF INTEREST

5. CONSENT AGENDA

- a. Items (*) 6a, 7a, & 7b

6. APPROVAL OF MINUTES

- *a. Minutes of the Public Hearing and Regular Assembly meetings held April 28, 2015

7. COMMUNICATIONS

- *a. School Board Action from the April 27, 2015 Regular meeting
- *b. POA-2014-436 Department of the Army Permit for George Woodbury

8. BOROUGH MANAGER'S REPORT

- i. Wrangell Medical Center update

9. BOROUGH CLERK'S FILE

10. MAYOR/ASSEMBLY REPORTS AND APPOINTMENTS

- a. Reports by Assembly Members
- b. Appointment to fill the Vacancy on the Planning & Zoning Commission

11. PERSONS TO BE HEARD

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Discussion and possible action on exemption from the State of Alaska Public Official Financial Disclosure Law (AS 39.50)

- b. Approval of the School Budget for Fiscal Year 2015-2016
- c. **PROPOSED ORDINANCE No. 901:** AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDMENT CHAPTER 5.04 PROPERTY TAX, AMENDING THE DUE DATE AND THE PENALTY AND INTEREST FOR LATE PAYMENT RELATING TO PROPERTY TAXES (first reading)
- d. **PROPOSED ORDINANCE: No. 902:** AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, ADDING A NEW CHAPTER 5.26 TO TITLE 5, REVENUE AND FINANCE, OF THE WRANGELL MUNICIPAL CODE TO ESTABLISH THE INVESTMENT POLICY AND OBJECTIVES FOR THE SWIMMING POOL FUND (*first reading*)
- e. Approval of a budget amendment from CPV (Commercial Passenger Vessel) funds to match Trails Grant funds
- f. Approval to join other intervenors in the appeal of the Big Thorne Timber Sale (*item added by Assembly Member Decker*)
- g. **Discussion regarding direction for the Hospital Board Liaison**

14. ATTORNEY'S FILE

15. EXECUTIVE SESSION

16. ADJOURNMENT

Agenda Items 1 - 6

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY

AGENDA ITEM

May 12, 2015

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 Borough Assembly 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 Julie Decker
- b. Invocation to be given by a member of the Baha'i Faith
- c. Ceremonial Matters – *Community Presentations, Proclamations, Certificates of Service, Guest Introduction*

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)*

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 under Unfinished Business.*

RECOMMENDED ACTION:

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

****6a, 7a, & 7b***

ITEM NO. 6 APPROVAL OF MINUTES:

INFORMATION:

6a *Minutes of the Public Hearing and Regular Assembly meeting held April 28, 2015*

**Minutes of Public Hearing
Held April 28, 2015**

Mayor David L. Jack called the Public Hearing to order at 6:30 p.m., April 28, 2015, in the Borough Assembly Chambers. Assembly Members Mitchell, Prysunka, Blake, Powell, and Rooney were present. Assembly Member Decker was absent. Borough Manager Jeff Jabusch and Clerk Kim Lane were also in attendance.

Public Hearing Items:

- a. PROPOSED ORDINANCE No. 898: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING SECTION 14.11.005, FEE SCHEDULE, OF THE WRANGELL MUNICIPAL CODE RELATING TO FEES FOR USE OF HARBORS AND PORT FACILITIES, TO ADD A FEE FOR LONG-TERM STORAGE RESERVATION AT THE MARINE SERVICE CENTER AND FEES FOR MEYER'S CHUCK MOORAGE (*second reading*)
- b. PROPOSED ORDINANCE No. 899: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING SECTION 5.22.030, ENHANCED 911 SURCHARGE ON LOCAL EXCHANGE ACCESS LINES AND WIRELESS TELEPHONE NUMBERS, OF THE WRANGELL MUNICIPAL CODE TO INCREASE THE MONTHLY SURCHARGE WITHIN THE ENHANCED 911 SERVICE AREA (*second reading*)
- c. PROPOSED ORDINANCE No. 900: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, PROPOSING AN AMENDMENT TO THE HOME RULE CHARTER, REPEALING SECTION 11-2, THOMAS BAY POWER AUTHORITY (*second reading*)
- d. Approval to Vacate Silvernail Work Road through the Marine Service Yard adjacent to Lot 4BB-1, W.S.I. SUBD II Subdivision, from the fenced entrance behind City Market to Front Street, zoned Waterfront Development, requested by the Port Commission

WRITTEN TESTIMONY – None

ORAL TESTIMONY

Assembly Member Mitchell voiced concern with raising the Harbor fees; raising fees too high might make visitors go elsewhere.

Harbormaster Greg Meissner replied that there is not a proposal to raise fees; they are proposing to add a fee for long-term storage.

Recessed at: 6:34 p.m.

Reconvened at: 6:55 p.m.

WRITTEN TESTIMONY – None

ORAL TESTIMONY – None

Public Hearing Adjourned at 6:55 p.m.

David L. Jack, Mayor

ATTEST:

Kim Lane, CMC, Borough Clerk

Unapproved

Minutes of Regular Assembly Meeting Held on April 28, 2015

Mayor David L. Jack called the Regular Assembly meeting to order at 7:00 p.m., April 28, 2015, in the Borough Assembly Chambers. Assembly Members Mitchell, Prysunka, Powell, Rooney, and Blake were present. Assembly Member Decker was absent. Borough Manager Jeff Jabusch and Clerk Kim Lane were also in attendance.

Pledge of Allegiance was led by Assembly Member Mark Mitchell.

Invocation was given by Donald McConachie.

CEREMONIAL MATTERS – *Community Presentations, Proclamations, Certificates of Service, Guest Introductions*

A Proclamation for **Municipal Clerk's Week**, May 3-9, 2015, was presented to Borough Clerk Lane.

AMENDMENTS TO THE AGENDA – None

CONFLICT OF INTEREST – Assembly Member Powell declared that he may have conflict of interest to Agenda Item 13b, Request to Vacate Silvernail Roadway due to his involvement in the process and his relationship with The Bay Co.

Mayor Jack ruled that Powell did not have a conflict of interest since with the proposed change; he did not stand to gain financially. There were no objections from the Assembly.

CONSENT AGENDA

M/S: Rooney/Mitchell, to approve Consent Agenda Items marked with an (*) asterisk; 6a, 7a, 7b, 7c, and 13c & 13d. Motion approved unanimously by polled vote.

APPROVAL OF MINUTES

The minutes of the Public Hearing and Regular Assembly meetings held April 14, 2015 were approved, as presented.

COMMUNICATIONS

- *a. Written Correspondence received from Terry Sherer – State Funding and AMHS
- *b. Written Correspondence from Wilma Leslie – Staging Area at City Dock
- *c. School Board Minutes from the February 16, 2015 Regular Mtg.

*13c. Final Plat approval of the Easement Dedication and Boundary Survey for the Etolin Avenue Lots

*13d. Final Plat approval of the Hazel/Haverstock Resubdivision

BOROUGH MANAGER'S REPORT

Manager Jabusch's report was provided.

BOROUGH CLERK'S FILE

The Borough Clerk's Report was provided.

MAYOR/ASSEMBLY REPORTS AND APPOINTMENTS

10a Assembly Member Prysunka reported on the SEAPA Bond refinancing; sold quickly at a favorable rate. Prysunka also reported that the Hospital had hired a new CFO to be shared with Petersburg. Prysunka reported that he was very pleased that the State Trooper has been reinstated in Wrangell.

10b Appointment to fill the Vacancy on the Planning & Zoning Commission

Mayor Jack appointed community member, Royce Cowan to fill the vacancy. There were no objections from the Assembly.

PERSONS TO BE HEARD

Randy Oliver, 3408 Zimovia Hwy., stated that he would need logs for the Logging Show during the 4th of July; the only place that he could find the type of wood that he needed was in the proposed area that Mike Allen Jr. wanted to harvest. Mr. Oliver stated that he spoke with Mr. Allen and he believed that this year would be okay but he was concerned about the upcoming years.

Bill Willard, 426 Front Street, provided the Assembly with some background on how the WCA Transportation program started in 2012; developed a long range plan to develop a department of transportation to train people and do small jobs for the community; entered into an agreement with the Forest Service in 2012 to do some trail work; last year, entered into an agreement with the Forest Service to replace culverts; hired three people to do that; needs property to keep the equipment that supports the program.

In response to Assembly Member Rooney, Mr. Willard stated that he wasn't sure if there were other lots that would work for his purpose. Mr. Willard stated that the three lots that they were interested in were the only ones that they are familiar with.

Manager Jabusch stated that the cost to get utilities to the first lot would be around \$66,000; and around \$115,000 for the second lot.

In response to Assembly Member Blake, Mr. Willard stated that he didn't think that they would require utilities for both lots.

Mr. Willard explained that this program had been going on since 1929; he didn't think that the program would go away anytime soon.

Brett Woodbury, 727 Case Ave., outlined a plan so that everyone could be accommodated; he stated that he would not require any utility services.

Aaron Angerman, 120 Reid Street, voiced his support for selling the lots to Wrangell Cooperative Association (WCA); he stated the tourism benefits that WCA provided to the community.

UNFINISHED BUSINESS

12a PROPOSED ORDINANCE No. 898: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING SECTION 14.11.005, FEE SCHEDULE, OF THE WRANGELL MUNICIPAL CODE RELATING TO FEES FOR USE OF HARBORS AND PORT FACILITIES, TO ADD A FEE FOR LONG-TERM STORAGE RESERVATION AT THE MARINE SERVICE CENTER AND FEES FOR MEYER'S CHUCK MOORAGE (*second reading*)

M/S: Prysunka/Blake, to adopt Ordinance 898. Motion approved unanimously by polled vote.

12b PROPOSED ORDINANCE No. 899: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING SECTION 5.22.030, ENHANCED 911 SURCHARGE ON LOCAL EXCHANGE ACCESS LINES AND WIRELESS TELEPHONE NUMBERS, OF THE WRANGELL MUNICIPAL CODE TO INCREASE THE MONTHLY SURCHARGE WITHIN THE ENHANCED 911 SERVICE AREA (*second reading*)

M/S: Blake/Powell, to adopt Ordinance No. 899 and for the distribution of revenues to be as follows: 40 percent would go to the repair and maintenance of the 911 equipment and the balance to go towards the operations of the system. Motion approved unanimously by polled vote.

12c PROPOSED ORDINANCE No. 900: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, PROPOSING AN AMENDMENT TO THE HOME RULE CHARTER, REPEALING SECTION 11-2, THOMAS BAY POWER AUTHORITY (*second reading*)

M/S: Powell/Prysunka, to adopt Ordinance No. 900. Motion approved unanimously by polled vote.

NEW BUSINESS

13a Approval of the Senior Tax Exemption that was received after the March 2nd deadline, but before the late filing grace period

M/S: Prysunka/Blake, to approve the 2015 Senior Tax Exemption for Rick Martin that was received after the deadline of March 2, 2015, but before the allowed grace period of April 15, 2015. Motion approved unanimously by polled vote.

13b Approval to Vacate Silvernail Work Road through the Marine Service Yard adjacent to Lot 4BB-1, W.S.I. SUBD II Subdivision, from the fenced entrance behind City Market to Front Street, zoned Waterfront Development, requested by the Port Commission

M/S: Blake/Powell, to approve the request to vacate the Silvernail Work Road from the end of the pavement behind the Museum to Front Street, and in place of the vacated ROW, create a 60'wide access easement from the end of pavement to Lot C, Bay Company Replat to provide access to that lot, then taper the access easement to 30 foot wide, with the easement to be located within the driving lane to the current gated access on Front Street. Motion approved unanimously by polled vote.

13c Final Plat approval of the Easement Dedication and Boundary Survey for the Etolin Avenue Lots

Final Plat was approved under the Consent Agenda.

13d Final Plat approval of the Hazel/Haverstock Resubdivision

Final Plat was approved under the Consent Agenda.

13e Approval to enter into an Agreement with Mike Allen Jr. for Temporary Use, to harvest timber on City Owned property, as requested by Mike Allen Jr.

M/S: Prysunka/Rooney, to approve the sale of 100 spruce trees to Mike Allen for \$25,000 to be cut at his sawmill in Wrangell and to authorize the Borough Manager to enter into a contract with Mike Allen to include conditions of the sale.

In response to Assembly Member Prysunka, **Mike Allen, 742 Evergreen Ave.**, stated that the logs that he would be harvesting would be processed in town. Mr. Allen stated that he would be cutting down only pre-selected wood; would still be trees standing, not a clear-cut situation.

In response to Assembly Member Blake, Mr. Allen stated that none of the logs were close to Rainbow Falls.

In response to Assembly Member Rooney, Mr. Allen stated that there would be some un-usable trees that would fall during harvesting; removing timber that would not be used for people to take for firewood would be expensive; he stated that it was not always common practice. Mr. Allen also stated that there would be about a 250 foot buffer from the highway; would not account for blown down trees.

Assembly Member Rooney inquired if it could be a condition in the agreement to have the unusable trees pulled out and made available for the public to get for firewood. Mr. Allen said that it wouldn't be cost effective for him to do that; he would have to get permission from Mental Health to access 90% of the desired trees; if he did that, the trees that he would be pulling out for firewood would be worth less than his labor.

Mr. Allen explained that the Forest Service states that anything that is faulty or un-merchantable can be left out in the woods; he will only be harvesting about 8 to 10 trees along the City owned lands road.

Mayor Jack stated that the City could not give permission to allow people to access Mental Health land to go and cut firewood. Assembly Member Rooney agreed.

Assembly Member Prysunka asked what the collateral damage would be if Mr. Allen was selectively cutting down trees? Mr. Allen replied that this would not be a clear-cut.

Assembly Member Mitchell stated that there would be some trees that fall as a result from cutting select trees; cannot drop a 30" tree without some damage to other trees.

In response to Assembly Member Mitchell, Manager Jabusch explained that there was a formula that the Forest Service gave to come up with the value of the timber. Jabusch stated that the Forest Service said that this sale was reasonable for the wood that was at the site.

Assembly Member Prysunka requested that there be a provision in the contract that states that Randy Oliver would have access to the trees he needed for the 4th of July Logging Show.

Assembly Member Rooney requested that there be a provision in the contract that required a set-back so that the harvesting would not be visible from the highway.

Assembly Member Prysunka encouraged all parties that the contract stated that only select timber would be logged.

Mr. Allen stated that there could be a Diameter Condition added to the contract to ensure that only specific timber would be logged.

Motion approved unanimously by polled vote.

13f Discussion and possible action regarding a request from Wrangell Cooperative Association to purchase City owned property

Manager Jabusch explained the three proposed options that the Assembly had.

Assembly Member Mitchell was in favor of putting all five lots out for public bid.

Assembly Member Prysunka stated that he was in support of the Tribal Government; he was in favor of selling the lots to WCA.

Assembly Member Rooney echoed Assembly Member Prysunka however, believed that the only fair thing to do would be to put them up for bid.

Assembly Member Blake agreed that WCA did great things for the community; there was a private enterprise business that had an adjacent lot that would benefit his business; stated that if they could not come to an agreement, the fair thing to do would be to put the lots out for bid.

Assembly Member Powell agreed and stated that there should be a way to work together to come to an agreement; also believed that there might be other interested parties that would like to bid on the properties.

Assembly Member Prysunka stated that the City had a precedent for supporting not for profit organizations; had done a similar thing with AICS.

Mayor Jack suggested that this item be postponed so that the two entities could work together to come to an agreement.

Manager Jabusch stated that if the property was to be sold to a private enterprise, the code stated that it would have to go out for bid. He stated that he would double check with the

Attorney; he would also check with the Attorney on doing a government to government arrangement.

Clerk Lane stated that if the City were to sell a piece of property to a private enterprise, it would have to go out for bid; if the City were to transfer or exchange property for one of these lots, it could be done without the bid process.

Mr. Woodbury stated that if he was able to purchase the lots, the City would not need to build a road to the lots.

M/S: Powell/Rooney, to direct the Borough Manager to check with the Attorney to see what the City can legally do with regards to private enterprise and government to government sales, and to try and to work with both parties to come to a workable solution. Motion approved unanimously by polled vote.

13g Approval and acceptance of an Amendment to the Sewer Pumps Replacement Project CDBG Grant

M/S: Blake/Prysunka, to accept the \$257,250.00 additional grant funds from the Community Development Block Grant (CDBG) and to authorize the Borough Manager to execute Amendment #01 for the Sewer Pumps Replacement project and approve the matching portion of this grant to come from either a potential and pending USDA grant or sewer reserves. Motion approved unanimously by polled vote.

13h Approval of Amendment #2 for DOWL HKM, for the Sewer Pumps Replacement Project, Contractual Services

M/S: Prysunka/Mitchell, to approve Amendment #2 to the contract with DOWL for Contract Administration service for the Sewer Pumps Replacement project, with funds in the amount of \$21,176.00 to be designated from the CDBG/DCCED project grant. Motion approved unanimously by polled vote.

13i Approval of a Change Order's 5, 6, and 7 for the Cassiar Roadway and Utilities Improvements project

M/S: Powell/Blake, to approve Change Order 5 & 6 in the amount of \$12,875 and Change Order 7 in the amount of \$37,618, for the total amount of \$50,493.74. Motion approved unanimously by polled vote.

ATTORNEY'S FILE – Summary Report was provided to the Assembly.

EXECUTIVE SESSION – None

Regular Assembly Meeting adjourned at 8:17 p.m.

David L. Jack, Mayor

ATTEST: _____
Kim Lane, Borough Clerk

Unapproved

Agenda Item 7

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

COMMUNICATIONS:

INFORMATION: The Assembly may receive items for Communications, reasons only which do not require separate 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 by an Assembly Member or the Mayor and placed on the regular agenda under Unfinished Business.

- *a. School Board Action from the April 27, 2015 Regular meeting
- *b. POA-2014-436 Department of the Army Permit for George Woodbury

BOARD ACTION

FOR DETAILS, CONTACT:

PATRICK MAYER,

SUPERINTENDENT

DIRECT PHONE: 907-874-2347

WRANGELL PUBLIC SCHOOL BOARD REGULAR MEETING APRIL 27, 2015

- Recessed into a Public Hearing to take comment on the Progress Toward Board Goals
- Reconvened into Regular Session
- Approved the Agenda, moving Policy Review to the May Agenda
- Approved the items on the Consent Agenda as presented
 - Accepted the Minutes of the March 16, 2015 Regular School Board Meeting
- Adopted the District Strategic Plan, Board Goals and Vision as presented
- Appointed the 2015-2016 Advisory Committee Members
- Approve the Continuation Request for Alaska's Fresh Fruit and Vegetable Program as presented
- Reviewed the Crisis Plan Review
- Discussed the Food Service Program
- Recessed into a Public Hearing to Collect Public Comments re: the FY'16 Budget
- Reconvened into Regular Session
- Offered Ryan Howe a Contract Addendum to teach Special Education Extended Year
- Offered Lisa Nikodym a Contract Addendum to Complete Required Counseling Duties
- Offered Fred Angerman a Contract as Maintenance Director for the 2015-16 Year
- Offered Deidre Jenson a Principal Contract for the 2015-16 School Year
- Offered Pam Roope a Contract as Business Manager for the 2015-16 School Year
- Presented Letters of Resignation/Retirement as an Item of Information:
 - Sara Gadd, Middle School Assistant Volleyball Coach
 - Charidee Howell, Paraprofessional
 - Michelle Mingming, Paraprofessional
 - Karen Morse, Kindergarten Music Teacher
- Adopted the FY'2016 Budget as revised
- Recessed into Executive Session
- Reconvened into Regular Session
- Adjourned



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 6898
JBER, ALASKA 99506-0898
MAY 06 2015

Regulatory Division
POA-2014-436

George Woodbury
Post Office Box 1934
Wrangell, Alaska 99929

Dear Mr. Woodbury:

Enclosed is the signed Department of the Army permit, file number POA-2014-436, Zimovia Strait, authorizing the discharge of 360 cubic yards of rock below high tide line, into 900 square feet of marine water, and installation of 22 steel piles to support a deck, ramp, and platform. The project site is located within Section 24, T. 62 S., R. 83 E., Copper River Meridian, USGS Quad Map: Petersburg B-2, Latitude 56.4734° N., Longitude 132.3897° W., Wrangell Tidelands Addition, Lot 6, in Wrangell, Alaska. Also enclosed is a Notice of Authorization which should be posted in a prominent location near the authorized work.

If changes to the plans or location of the work are necessary for any reason, plans must be submitted to us immediately. Federal law requires approval of any changes before construction begins.

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, in writing at the letterhead address, or by phone at (907) 753-2708. For additional information about our regulatory program, visit our web site at: www.poa.usace.army.mil/Missions/Regulatory.aspx

Sincerely,


Jack Hewitt
Project Manager

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee: George Woodbury

Permit No.: POA-2014-436, Zimovia Strait

Issuing Office: U.S. Army Engineer District, Alaska

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Discharge 360 cubic yards or shot rock below high tide line, into a 30 feet by 30 feet footprint, and drill sockets to install 22 each, 5 inch diameter steel pile, below mean high water line, to support a 20 feet by 25 feet deck, a 10 feet by 30 feet ramp, and a 20 feet by 20 feet platform. All work will be performed in accordance with the attached plan, 2 sheets, dated 1/5/2015.

Project Location: The project site is located within Section 24, T. 62 S., R. 83 E., Copper River Meridian, USGS Quad Map: Petersburg B-2, Latitude 56.4734° N., Longitude 132.3897° W., Wrangell Tidelands Addition, Lot 6, in Wrangell, Alaska.

General Permit Conditions:

1. The time limit for completing the work authorized ends on April 30, 2020. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Permit Conditions:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States 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; or by telephone at (907) 463-2272.
3. The permittee understands and agrees that, if future operations by the United States 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 United States. No claim shall be made against the United States on account of any such removal or alteration.
4. Fill material shall consist of clean rock fill and riprap, free from fines and suspendable material, to the extent practicable.
5. All authorized work shall be accomplished during low tidal stages, when the area is completely dewatered.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

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

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. 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.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail 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.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Ray Woodby owner
(PERMITTEE) AND TITLE

4/20/2015
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Jack Hewitt
FOR (DISTRICT COMMANDER)
Colonel Christopher D. Lestochi
Jack Hewitt, Project Manager
South Branch, Regulatory Division

4 May 2015
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions have the transferee sign and date below.

(TRANSFEREE)

(DATE)

Stikine Street

N

Adjacent owner
Tim Peterman

Existing
Warehouse

HTL +19.8

Adjacent owner
Thielmann

Proposed
House

Foundation wall

Existing
Fill

Existing
Stacked wall

Top of fill
+23 tide

HTL
MHW

+13 tide

Sea Grass

174'

101'

25'

Proposed
Fill 30'x30'

Piling Supported deck
Elevation +23
25'x20'

10'

Piling Supported Ramp
Elevation +23
10'x30'

10'

Piling Supported platform
Elevation +23 20'x20'
+8' tide

20'

30'

Scale
1"=20'

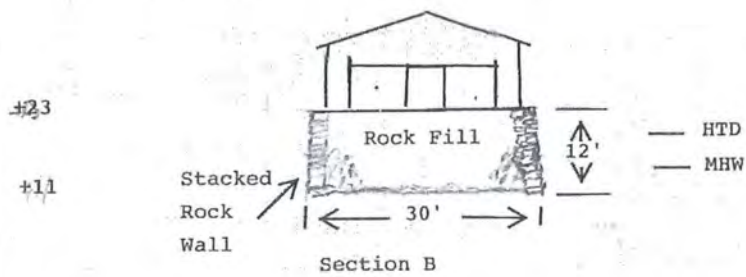
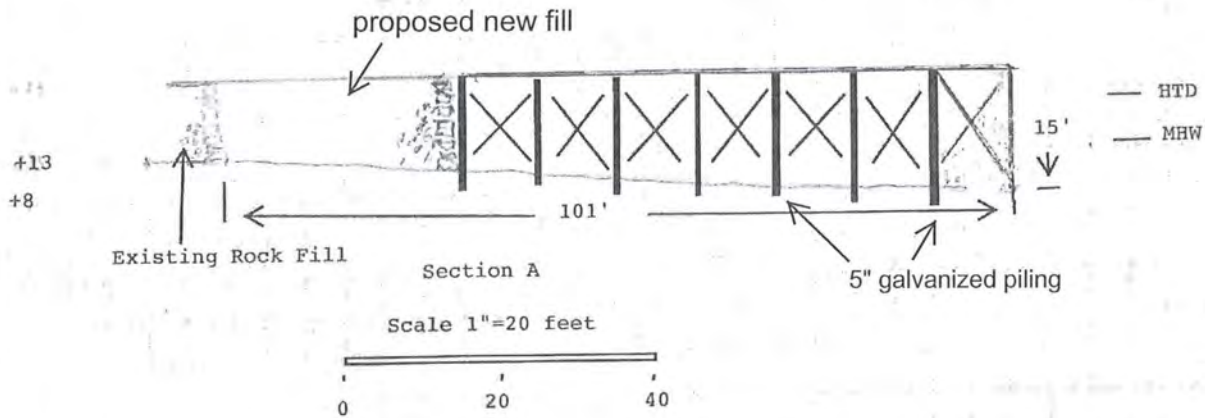
MLLW



Rock Fill Lot 6 BLK A
for Residence buildings
POA-2014-359 Revised
1/5/2015
Zimovia Strait
September 2014
Sheet 1 of 2

0 20 40

Profile Lot 6 Stikine St.
POA-2014-359436



Section C
Deck



Section D
Ramp



Section E
Platform

Rock Fill Lot 6 BLK A
Revised 1/5/15
For Residence Buildings
Zimovia Strait
September 2014
Sheet 2 of 2
POA-2014-436

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: George Woodbury		File Number: POA-2014-436	Date: April 6, 2015
Attached is:			See Section below
X	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	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

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: 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.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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

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

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

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

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.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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MEMORANDUM

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

**FROM: JEFF JABUSCH
BOROUGH MANAGER**

SUBJECT: Manager's Report

DATE: May 8, 2015

Legislature:

This has been a stressful process for everyone concerned. The major from the legislature has been the funding for the jail. In the current year we are receiving \$591,000. Originally they were going to eliminate funding. Then they said they were going back to the 2011 level which was \$283,000. Then we got a letter saying they were going to cut it about 33% which would be about \$395,970. Now the governor has sent them back into session to address the budget and we have heard they are going back to the 2011 amount of \$283,000. We are making the changes at this time to absorb the additional cut.

Budget:

May 12th- Public Hearing- at the hearing we will provide an update of any new information we have received or any changes that we anticipate.

It is anticipated that unless there are other major changes, we will bring the budget to the assembly on May 26th for another Public Hearing and then present the budget for approval at the Regular meeting. We would also set the mill rate at that meeting. The mill rate is being proposed at the current rate of 12.75 mills on the road system and 4 mills everywhere else in the borough.

One reasonably major issue has come up that will change the water fund budget is the need to replace at least one of the ozone generator units. Past research shows that these come at a price tag of roughly \$140,000 to \$160,000. The units we have are no longer made so parts are very difficult to find. This funding will come out of the water department funds.

Projects being worked on:

- **Asbestos Removal in the Community Center Gym (downstairs)** - This is scheduled to go out to bid in the next 30 days and it is expected to be complete by the end of the summer. This project is on schedule.
- **Cassiar Street Improvements**- The main portion of this project was completed last fall. Additional work remains to finish up some items we had wanted to do but were not sure how the money available would work out until the project was closed out. Some of the work yet to do is guardrail installation, sewer line from Cassiar to Second Street, retaining walls in a couple of locations and some other misc. work. This work is scheduled for this year.
- **Sewer Pump Station**: We have received additional grant money that pays for 75% of the project. We have already most of the match from the state in the form of a loan if we

choose to use it. Carol Rushmore is working on an application to USDA Rural Development that could possibly provide grant funds for the match. After receiving the application, they will determine to either give us a grant or a loan or maybe neither. We have to wait and see. If we don't receive either, we currently have enough for our match in the sewer fund reserves. This project is extremely important because both pump stations are far beyond their useful lives and are at the risk of failing at any time. We are almost ready to bid now but want to wait to hear about the USDA Rural Development application before we go forward in case grant money is available.

- **Shoemaker Bay Float Design-** PND is moving along on the design and to date has completed Task 1, field assessments, surveying and electrical exploration, conducted by staff engineers. Task 2 is in progress for work relating to permit applications and approvals, sequential submittals of preliminary designs for 35%, 65%, and ultimately the final 90% design. To date, PND has completed concept plans for the moorage and upland improvements to the parking area. Included in these concept plans is the North Basin area of the bay to include additional moorage as funds become available in the future.
- **Wood Street-** Staff reported earlier this year that the Wood Street project would be moving forward with hopes of a 2015 construction season. PND's updated project estimates revealed a nearly \$200,000 shortfall in funding based on the current design. Staff identified various pieces of the design which could be eliminated and reintroduced at a later date, as additional funds become available. Some of those design pieces were: 1) eliminate the sidewalk and the hospital's gravity sewer stub, 2) reduce the earthwork contingency by one third the amount calculated since it was originally calculated with a conservative value, and 3) reduce overall project contingency to 5%. Even with these design pieces removed, the project is maintaining a shortfall of nearly \$75,000. As a further reduction, the contingency could be minimized even further by applying a 10% contingency to the water utilities budget line item only, but which may be risky as this project includes replacing a portion of the water main in the roadway which feeds the town's water supply.

We believe the Wood Street project may benefit from the fact that there should be an asphalt plant in Wrangell during the 2016 construction season for the Evergreen Street Improvements project. Therefore, advertisement for this project is anticipated to occur in early winter 2015, immediately following the contract award for the Evergreen Street Improvements project.

- **Connection to Upper Reservoir**
Initially, the plan was to offer the newly updated RFP to Wilson Engineering, Seattle, the firm who initially started the project in the late 90's. At that time, Work stopped about mid-way through the project due to permitting issues. The balance of funds were then allocated to other projects at the time. Currently, staff decided it would be in the best interest of the CBW to put the project out to bid. This resulted in some needed changes to the current language in the RFP. While the intention is to put this project out to bid as soon as possible, PW staff is in the process of making sure all previous project files, supporting documents and plans for the previously completed portion of the project is available for inclusion in the RFP.

- **Water Treatment Plant Pilot Study**

The water treatment pilot study, funded by the Department of Commerce, Community and Economic Development (DCCED) is for the purpose of providing CBW information and direction for a water treatment method that would provide drinking water that exceeds current and future requirements.

An RFP was advertised in April and we received an overwhelming response from many firms which included Alaska, Washington, and Colorado. Several firms were in town to attend the pre-proposal conference on April 7, 2015. CBW received a total of 6 proposals, and 3 of which teamed up with other firms who previously expressed an interest in the project, meaning a total of 9 engineering firms are represented in the proposals. Staff is currently reviewing the proposals and a firm will be selected this month.

- **Evergreen Road Improvements**

The Evergreen Road Improvements project is slated to rehabilitate the Stikine and Evergreen roads from the ferry terminal to the airport. The project will provide upgrades to the curve geometry where warranted and construct curbs, gutter and sidewalk from the ferry terminal to the Petroglyph Beach access road.

DOT has indicated to staff that the geotechnical data report is complete, the project footprint was changed to reduce cost, and the pre-environmental design is complete. The environmental process is expected to be complete by the end of May 2015, followed by SHPO's review and then a review by the Right Of Way (ROW) division. DOT anticipates scheduling a public meeting in Wrangell, once the ROW process is underway, in order to review the project with the community.

- **City Dock** project continues to move forward. We have a bunch of smaller things we would like to do with the remaining money.

- Camel logs have arrived
- Add an aluminum railing for tie up lines to slide over when dragging the lines along the dock when ships come in. This is being is currently being fabricated locally at this time.
- New electrical and lights which are planned to be similar to the Front Street lights.
- Hand Railing on the South side approach to the dock that is now on the North side.
- Possible new float on the South side of the approach so that there are two separate summer floats to access.
- Vendor Shelter- This was discussed at the last meeting and we will start to work on this in the upcoming months with our engineer to get an idea of the cost that could be expected.

- **City Etolin Street Lots-** The lots are currently being advertised with a bid opening date of May 29th.

Investment of Swimming Pool Funds:

This ordinance is before the assembly at the May 12th meeting for the first reading.

Swimming Pool Reopening:

The pool has been refilled and staff is in the process of bringing the water up to temperature and removing the sediment that comes with filling it up. Once the pool is up to temperature, the water clear and the chemicals are balanced, we can reopen. Again, the repairs seems to all be working and everything going good so far.

Agenda Item 9

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM

CLERK'S REPORT May 12, 2015

Mark Your Calendar:

- 5/9 - 6/7, 2015 63rd Annual King Salmon Derby
- 5/14 Planning & Zoning meeting scheduled for 7pm in the Assembly Chambers
- 5/20 Hospital Board Meeting scheduled for 5:30 pm at the Nolan Centers
- 5/26 Memorial Day - City Hall Closed
- 5/26 Corvus Presentation of the Waterfront Master preferred plan scheduled for 5:30pm in the Assembly Chambers
- 5/26 2nd Budget Public Hearing mtg. scheduled for 6pm in the Assembly Chambers
- 5/26 Regular Public Hearing mtg. scheduled for 6:30pm in the Assembly Chambers
- 5/26 Regular Assembly mtg. scheduled for 7pm in the Assembly Chambers

June 10 SEAPA Board Meeting to be held in Ketchikan

Municipal Clerks Professional Development Institute
Tacoma, Washington
June 7th through June 12nd, 2015

I will be attending this essential training. The funding for this training is in my
Travel & Training Budget for FY 2014-15

Deputy Clerk Lavonne Klinke will serve as the Clerk for the June 9th Regular Assembly Meeting.

Kim Lane, Borough Clerk

Agenda Item 10 a & b

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY
Revised - AGENDA ITEM
May 12, 2015

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.

➤ **Item 10a** Reports by Assembly Members

➤ **Item 10b** Appointment to fill the vacancy on the Planning & Zoning Commission

There were two (2) letter of interest received for the vacancy from:

- *Dwight D. Keegan*
- *Jim Shoemaker*

RECOMMENDED ACTION, IF NOT APPROVED WITH THE CONSENT OF THE ASSEMBLY:

Move to appoint _____ to fill the vacancy on the Planning & Zoning Commission for the unexpired term ending October 2017.

Agenda Item 13a

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

Discussion and possible action on exemption from the State of Alaska Public Official Financial Disclosure Law (AS 39.50)

Attachments:

1. Opt-out Information provided by the State of Alaska, APOC AS 39.50
2. Local Alaska Communities that are exempt from APOC

Suggestion: If it is the desire of the Assembly, direction can be given to the Borough Clerk to begin the process of drafting an Ordinance with the assistance of the Borough Attorney to be brought back to the Assembly for consideration. Once the Ordinance is adopted, the Clerk will place a question before the voters in October 2015, of whether or not to exempt municipal officers and candidates for elective office from the requirements of the POFD, AS 39.50.

RECOMMENDED ACTION:

Move to direct the Borough Clerk to begin the process of drafting an Ordinance with the assistance of the Borough Attorney that would bring the question to the voters at the October, 2015 municipal election on whether or not to exempt municipal officers and candidates for elective office from the requirements of the POFD, as defined in AS 39.50, to be brought back to the Assembly for consideration.

Opting Out of Reporting Requirements Under Alaska Statute 39.50, Public Official Financial Disclosure

In response to numerous requests from municipalities and individuals subject to Alaska Statute 39.50, the Public Official Financial Disclosure (POFD) law, the Alaska Public Offices Commission (APOC) has prepared the following information on how a municipality may opt out of these reporting requirements.

Under the same law that requires your municipal officials to file Public Official Financial Disclosure Statements, there is an option for a municipality to exempt their officials from reporting.

The authority to opt out of the POFD reporting requirements can be found in AS 39.50.145, Alaska's Public Official Financial Disclosure Law:

Sec. 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election. (§ 16 ch 25 SLA 1975; am § 1 ch 211 SLA 1975; am § 62 ch 74 SLA 1985)

Some municipalities have chosen to discontinue the reporting requirement entirely and some municipalities have chosen to opt out but to create a simpler version of the requirements and forms.

If your municipality votes to opt out of the reporting requirements, the information is no longer required by the state. If your municipality votes to opt out of the POFD law and substitute a simplified version of financial disclosure reporting requirements, there will be no further requirement for you to provide the information to the Alaska Public Offices Commission.

Of those municipalities that have opted out of the current Public Official Financial Disclosure reporting requirements under AS 39.50, some have modified previous APOC forms and now administer their own version of financial disclosure reporting.

PROCESS FOR OPTING OUT

- Step 1:** The question of exemption from AS 39.50 is submitted by your city council or borough assembly, by ordinance or by initiative election. The city council must approve the ordinance to place the question of exemption from the law on the ballot. (See attached sample language.)
- Step 2:** Educate voters on the ballot question. There are specific guidelines under state law that a municipality must follow if municipal funds are to be used to influence the outcome of a ballot proposition or question. (See AS 15.13.145 below)
- Step 3:** Voters decide at a regular or special municipality-wide election whether or not to opt out of AS 39.50.
- Step 4:** If a majority of voters decide to opt out of POFD reporting requirements, your municipal officials are no longer subject to AS 39.50.
- Step 5:** You must provide APOC with a copy of the official election results indicating that your municipality is no longer subject to the POFD law administered by APOC. Your officials and candidates will not be required to file POFD statements the following year.
- (If a majority of voters decide not to opt out of the POFD reporting requirements, your officials will continue reporting under AS 39.50.)

MUNICIPAL APPROPRIATION OF FUNDS TO INFLUENCE THE OUTCOME OF AN ELECTION

Sec. 15.13.145. Money of the state and its political subdivisions. (a) Except as provided in (b) and (c) of this section, each of the following may not use money held by the entity to influence the outcome of the election of a candidate to a state or municipal office:

- (1) the state, its agencies, and its corporations;
- (2) the University of Alaska and its Board of Regents;
- (3) municipalities, school districts, and regional educational attendance areas, or another political subdivision of the state; and
- (4) an officer or employee of an entity identified in (1) - (3) of this subsection.

(b) Money held by an entity identified in (a)(1) - (3) of this section may be used to influence the outcome of an election concerning a ballot proposition or question, but only if the funds have been specifically appropriated for that purpose by a state law or a municipal ordinance.

(c) Money held by an entity identified in (a)(1) - (3) of this section may be used

(1) to disseminate information about the time and place of an election and to hold an election;

(2) to provide the public with nonpartisan information about a ballot proposition or question or about all the candidates seeking election to a particular public office.

(d) When expenditure of money is authorized by (b) or (c) of this section and is used to influence the outcome of an election, the expenditures shall be reported to the commission in the same manner as an individual is required to report under AS 15.13.040 (§ 24 ch 48 SLA 1996)

**SAMPLE ORDINANCE FOR PLACING THE QUESTION OF EXEMPTION
FROM THE AS 39.50, PUBLIC OFFICIAL FINANCIAL DISCLOSURE
LAW ON THE BALLOT**

ORDINANCE NO. _____

THE BOROUGH / CITY OF _____ ORDAINS:

*That the question of whether or not to exempt municipal officers and candidates
for elective office from the requirements of the State of Alaska Public Official
Financial Disclosure Law (AS 39.50) shall be placed on the ballot*

(1) at the regular election to be held on _____ (date of the election).

- OR -

*(2) at a special election called for that purpose and scheduled to be held on
_____ (date of special election).*

**SAMPLE BALLOT LANGUAGE FOR PLACING THE QUESTION OF
EXEMPTION FROM THE PUBLIC OFFICIAL FINANCIAL DISCLOSURE
LAW (AS 39.50) ON THE BALLOT**

OFFICIAL BALLOT

BOROUGH/CITY OF _____ DATE: _____ PROPOSITION NUMBER _____

*Shall the municipal officers and candidates for elective office of the Borough/City
of _____ exempt from the requirements of the AS 39.50, Public Official
Financial Disclosure Law*

YES ____
NO ____

EXEMPT LOCAL GOVERNMENTS

EXEMPT from PUBLIC OFFICIAL FINANCIAL DISCLOSURE REQUIREMENTS UNDER AS 39.50

AS 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of those voting on the question at a regular election, as defined by AS 29.71.800, (20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election.

N/A	Akhiok	197	1975	Galena	N/A	Old Harbor
1998	Akiak	199	1998	Gambell	1977	Ouzinkie
1990	Akutan		1976	Golovin	1975	Palmer
1976	Alakunuk		1991	Goodnews Bay	1975	Pelican
1993	Aleknagik		2000	Grayling	1975	Petersburg
2011	Aleutians East Borough		N/A	Gustavus	1992	Pilot Point
1978	Allakaket		2012	Haines Borough	1994	Pilot Station
1975	Ambler		1975	Homer	1994	Platinum
1995	Anaktuvuk Pass		1976	Houston	1997	Point Hope
1975	Anderson		1990	Hughes	1976	Port Alexander
2001	Aniak		1988	Huslia	1979	Port Heiden
2003	Anvik		1975	Kachemak	1976	Port Lions
N/A	Atka		1975	Kake	1992	Quinhagak
1991	Atqasuk		1977	Kaktovik	1976	Ruby
2012	Bethel		1976	Kaltag	1994	Russian Mission
N/A	Bettles		1978	Kasaan	1977	Savoonga
1996	Brevig Mission		2008	Kenai, City of	1993	Saxman
1975	Bristol Bay Borough		2008	Ketchikan, City of	1979	Scammon Bay
1999	Buckland		1998	Kiana	2010	Seldovia
N/A	Cherfornak		1981	King Cove	2012	Seward
1998	Chevak		N/A	Kivalina	N/A	Shageluk
N/A	Chignik		1977	Klawock	N/A	Shaktoolik
1994	Chuathbaluk		1998	Kobuk	1996	Sheldon Point
1981	Clarks Point		1976	Kodiak (city)	1975	Shishmaref
2008	Coffman Cove		1975	Kotlik	1975	Shungnak
2000	Cold Bay		1988	Koyukuk	2008	Sitka, City & Borough
1975	Cordova		1977	Kupreanof	1998	St. George Is.
1976	Craig		N/A	Larson Bay	1977	St. Mary's
1975	Deering		1995	Marshall	1996	Tanana
2008	Delta Junction		N/A	Metlakatla	1994	Teller
2008	Delta Borough		2005	Mountain Village	2000	Tenakee Springs
2008	Denali Borough		1996	Napakiak	1994	Toksook Bay
1976	Dillingham		1999	Napaskiak	1977	Unalakleet
1975	Diomedes		1975	Nenana	1992	Upper Kalskag
1976	Eagle		1979	Newtok	1975	Valdez
1995	Eek		N/A	Nightmute	1992	Wales
2008	Egegik		1977	Nikolai	1976	White Mountain
2001	Ekwok		N/A	Nondalton	1976	Whittier
1975	Elim		1979	Noorvik		
1980	Emmonak		1995	Nuiqsut		
1998	False Pass		1980	Nulato		
2009	Fairbanks, City of		1993	Nunapitchuk		

Agenda Item 13b

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

Approval of the School Budget for Fiscal Year 2015-2016

Attachments:

1. Proposed Wrangell Public School FY 2015-2015 Budget

RECOMMENDED ACTION:

Move to approve the Wrangell Public School Budget for the Fiscal Year 2015-2016.

Wrangell Public School
FY 16 Budget
Student count 272

CITY CLERK
APR 28 2015
RECEIVED

	<u>FY 16</u> <u>Budget</u>
Revenues	
City Contributions	\$667,799.00
Interest	150.00
Other Local Revenue	8,000.00
Student Activity Revenue	14,250.00
eRate	81,235.00
QSI Grants	10,736.00
Foundation Support	3,304,112.00
On Behalf of TRS	302,157.00
On Behalf of PERS	51,601.00
Impact Aid	940.00
Timber Receipts/Secure Rural S	848,488.00
Beginning Operating Capital/inv	585,000.00
Total Revenue	<u>5,874,468.00</u>
Total Expenditures	
Superintendent Contract	113,300.00
Salaries - Principal	176,675.00
Director	84,004.00
Salaries - Teachers	1,478,698.00
Extra Duty Pay	23,991.00
Extra Duty Pay NC	53,710.00
Salaries - Aides	192,366.00
Support Staff	361,678.00
Custodian	232,611.00
Substitutes/Temporaries	104,700.00
Payroll Benefits	1,556,223.00
Transportation Allowance	5,100.00
Professional & Technical	203,985.00
Staff Development	5,000.00
Staff Travel	63,820.00
Student Travel	135,400.00
Student State Travel	15,000.00
Utility Services	30,770.00
Communications	123,604.00
Electricity	190,600.00
Heating Oil	95,000.00
Advertising or Other Purchased	5,050.00
Equipment Repair & Maintenan	27,300.00
Insurance and Bond Premiums	77,000.00
Supplies	223,267.00
Testing Supplies	3,750.00
Textbooks	34,725.00
Library Books	5,600.00
Periodicals	1,225.00
Dues and Fees	61,575.00
Indirect Costs	(32,000.00)
Service Charge	1,000.00
Equipment	102,388.00
Transfer to other Funds (FS/BUS)	117,000.00
Total Expenditures	<u>5,874,115.00</u>
Brief Summary	
Operating Capital	585,000.00
Total Revenues	5,289,468.00
Total Expenditures	<u>5,874,115.00</u>
Ending Operating Capital	353.00
% for Operating capital	0.01%
Special Revenue Grant Fund 503	\$389,514

Agenda Item 13c

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

PROPOSED ORDINANCE NO. 901: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDMENT CHAPTER 5.04 PROPERTY TAX, AMENDING THE DUE DATE AND THE PENALTY AND INTEREST FOR LATE PAYMENT RELATING TO PROPERTY TAXES *(first reading)*

Attachments:

1. Memo from Finance Director, Lee Burgess
2. **Proposed Ordinance No. 901**

RECOMMENDED ACTION:

Move to approve first reading of Ordinance No. 901, and move to a second with a Public Hearing to be held on May 26, 2015.

MEMORANDUM

TO: MAYOR DAVID JACK AND ASSEMBLY

FROM: LEE BURGESS, FINANCE DIRECTOR

SUBJECT: AMENDMENT OF PROPERTY TAX ORDINANCE TO ESTABLISH A SINGLE DUE DATE

Date: May 1, 2015

Background:

Property taxes are due to the borough by August 15 of every year, or may be paid in two installments at August 15 and December 15. While this provides convenience and flexibility to some taxpayers, there are also disadvantages, which include:

- More work calculating interest and penalties corresponding to two different one-half installments (or more, if multiple years are delinquent).
- Some taxpayers every year find it confusing as to what amounts are due when (e.g. some individuals who intend to pay the full amount in one installment mistake the due date as being Dec. 15 rather than Aug. 15.).
- The first half installment due date (August 15) is typically in the same week as the auditing team site visit for the year-end financial audit. The combination of the large influx of taxpayers at City Hall while audit teams are also on-site with numerous questions and requests makes this particular week and day one of the most chaotic and stressful of the year for the finance department.
- Penny rounding and payment errors on one-half installments of taxes with odd-cent tax liabilities. In other words, tax liabilities are frequently a penny off due to the one-half installment option, which needs to be resolved for accounts to balance (and cannot simply be written off or ignored). This costs more in time/money trouble-shooting out-of-balance amounts than those pennies are worth.
- December 15th is just before Christmas and not a good time to be collecting taxes. We have heard this complaint in the past.
- Moving the payment to September 15th gives workers in the fishing, construction and other summer occupations another month before the payment is due.

Most of these issues would be resolved if there were a single due date for property taxes. I would suggest August 31 of every tax year as this is not during the annual financial audit but is still during the summer when many individuals are in a better financial position to make the payment.

Some individuals could incur penalties and interest because of a single due date (i.e. being unable to meet the full tax at the due date), but others already incur penalties and interest unnecessarily because of confusion or mistakes regarding the two-installment policy. Therefore I do not believe this would

significantly change penalties and interest revenue from late payments one way or the other, nor is that a goal of this proposal.

It is ultimately the responsibility of the property owner to meet the property tax obligation, but a single property tax due date that does not coincide with the week of the year-end financial audit and site visit would simplify this matter for taxpayers and staff.

We have looked at the municipal codes for other Southeast communities just to see what others do. Petersburg, Sitka, Ketchikan and Juneau have a one payment date. Haines and Craig have a two payment date unless the amount is small (\$50 for Craig and \$200 for Haines) and then it also would be a one payment date. Also it seems that September 30th is the most used date also September 1st is also used on a couple.

Recommendation:

Move to authorize staff to bring back an ordinance changing the current property tax due date from a two date payment to September 15th as a single payment date.

Respectfully submitted,

Lee Burgess
Finance Director

CITY AND BOROUGH OF WRANGELL, ALASKA

ORDINANCE NO. 901

AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING SECTIONS 5.04.350 AND 5.04.360 OF CHAPTER 5.04, PROPERTY TAX, OF THE WRANGELL MUNICIPAL CODE TO AMEND THE DUE DATE FOR PAYMENT OF PROPERTY TAXES AND THE PENALTY AND INTEREST FOR LATE PAYMENTS OF PROPERTY TAXES

BE IT ORDAINED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA:

[The changes to the existing code are shown as follows: the words that are underlined are to be added and the words that are **[bolded and in brackets are to be deleted]**.]

SEC. 1. Action. The purpose of this ordinance is to amend Sections 5.04.350 and 5.04.360 of the Wrangell Municipal Code relating to the delinquent date for payment of property taxes and the penalty and interest for late payments of property taxes.

SEC. 2. Amendments. Sections 5.04.350 and 5.04.360 of the Wrangell Municipal Code are amended to read:

5.04.350 Delinquent date for payment of taxes.

All taxes levied in accordance with this chapter shall be due and payable on or before September 15**[August 15th]** of the assessment year and shall become delinquent if not paid before 5:00 p.m. on said date, or, if payment is received through the mail after said date, when the mailed payment is postmarked after said date **[; provided, however, that the taxpayer shall have the right to pay such taxes in two equal installments. If the taxpayer pays the taxes in two installments, the first one-half installment shall be due and payable on or before August 15th, the second one-half installment shall be due and payable on or before December 15th of the same year and shall become delinquent if not paid before 5:00 p.m. on said date, or, if payment is received through the mail after said date, when the mailed payment is postmarked after said date. Penalty and interest on an unpaid installment shall accrue from the date the installment becomes due]**.

Section 5.04.360 Penalty and interest for late payments.

When the general tax provided for in this chapter is not paid on or before the due date, penalties and interest will accrue as follows:

A. A penalty of 10 percent of the unpaid taxes shall be added thereto immediately upon delinquency. **[If the first one-half installment is not paid when due, a penalty of 10 percent, together with interest at the rate of eight percent per year on the unpaid installment, not including penalty, from due date until paid in full, shall be added thereto.]**

B. Interest at an annual rate of 10 percent shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. When interest is applied, it shall be calculated and accrue on a daily basis. **[After the due date for the payment of the second one-half installment, a total penalty of not to exceed 10 percent shall be added to all delinquent taxes, and interest at the rate of eight percent per year shall accrue, as provided in this section, upon all unpaid taxes, not including the penalty, from due date until paid in full.]**

SEC. 3. Classification. This ordinance is of a permanent nature and shall be codified in the Wrangell Municipal Code.

SEC. 4. Severability. If any portion of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

SEC. 5. Effective Date. This ordinance shall be effective upon adoption.

PASSED IN FIRST READING: _____, 2015.

PASSED IN SECOND READING: _____, 2015.

David L. Jack, Mayor

ATTEST:

| _____
Kim Lane, Borough Clerk

Agenda Item 13d

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

PROPOSED ORDINANCE: No. 902: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, ADDING A NEW CHAPTER 5.26 TO TITLE 5, REVENUE AND FINANCE, OF THE WRANGELL MUNICIPAL CODE TO ESTABLISH THE INVESTMENT POLICY AND OBJECTIVES FOR THE SWIMMING POOL FUND *(first reading)*

Attachments:

1. Memo from Manager Jabusch
2. **Proposed Ordinance No. 902**

RECOMMENDED ACTION:

Move to approve first reading of Ordinance No. 902, and move to a second with a Public Hearing to be held on May 26, 2015.

MEMORANDUM

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

**FROM: JEFF JABUSCH
BOROUGH MANAGER**

SUBJECT: ORDINANCE TO CREATE THE SWIMMING POOL FUND

DATE: MAY 4, 2015

Information:

As we continue to look at ways to reduce expenses and increase revenues the swimming pool reserve has been talked about with staff for some time. In addition, Assembly Member Decker also asked about getting more out of the investment of these funds. This prompted us to push a little harder and put this on top of the to do list. We contacted the manager of the Permanent Fund the city has to get his advice on the best way to approach setting up a new fund for this purpose.

He said that the ordinance that we have with our Permanent Fund would work with a handful of changes. Some of the changes in the proposed ordinance are his suggestions and others were administrative changes we made. He also suggested that the initial funds put into this start out more conservative than that of the Permanent Fund. We have included language that we feel will address that concern.

The things that staff can invest in is limited to Certificates of Deposit and have a low rate of return at the present time. Although investing in other instruments such as stock does not guarantee larger returns, it appears to be a better investment option over a longer period of time.

The Swimming Pool Reserve was set up in the early 1980's when the city received money from a windfall lawsuit. At that time, the community was planning to build a swimming pool and knew that pools were expensive to maintain so the money was dedicated to be put aside for the purpose of supporting the pool as a long term revenue generator. This has worked pretty well until the last four or five years when interest rates have been at the lowest point in over 30 years.

We feel that passing the ordinance and setting up this fund with Morgan Stanley will average over the long term much more money than if we continue investing in Certificates of Deposit. We likely will have years where we actually lose money, but history has shown that stocks outperform CD's over the long haul. The ordinance is written so that risk is minimized, but it is still more risk than with CD's. Over time we feel this is a better option and will create the most return on investment for the swimming pool reserve funds.

Recommended Motion:

Move to approve ordinance in first reading and move to second with a public hearing to be held on May 26th, 2015.

CITY AND BOROUGH OF WRANGELL, ALASKA

ORDINANCE NO. 902

AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, ADDING A NEW CHAPTER 5.26 TO TITLE 5, REVENUE AND FINANCE, OF THE WRANGELL MUNICIPAL CODE TO ESTABLISH THE INVESTMENT POLICY AND OBJECTIVES FOR THE SWIMMING POOL FUND

WHEREAS, on June 26, 1984, the Council of the City of Wrangell adopted Resolution No. 6-84-198, which authorized the creation of a special fund to be known as the Swimming Pool Fund and instructed that certain funds be deposited in the Swimming Pool Fund; and

WHEREAS, Resolution No. 6-84-198 directed that the Swimming Pool Fund and interest earned on the fund be used exclusively for the operation and maintenance costs of the swimming pool and urged future City Council members to preserve the fund for these purposes for the benefit of taxpayers; and

WHEREAS, on September 25, 1984, the City Council adopted Resolution No. 9-84-206, which authorized that certain additional funds be deposited in the Swimming Pool Fund and be used only for the purposes set forth in Resolution No. 6-84-198; and

WHEREAS, since its creation, the Swimming Pool Fund has been maintained as a separate fund within the finances of the City of Wrangell and, upon its incorporation, the City and Borough of Wrangell, and used only for the operation and maintenance of the swimming pool;

WHEREAS, the Swimming Pool Fund assets have been invested in accordance with the general investment policy set out in Chapter 5.02, Investment of Borough Funds, of the Wrangell Municipal Code; and

WHEREAS, the Borough Assembly has determined that it would be in the best interests of the City and Borough of Wrangell to establish an investment policy and objectives specifically for the Swimming Pool Fund, generally following the investment policy established for the City and Borough of Wrangell Permanent Fund.

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA:

SEC. 1. Action. The purpose of this ordinance is to add a new Chapter 5.26 to Title 5, Revenue and Finance, of the Wrangell Municipal Code to establish an investment policy

and objectives for the Swimming Pool Fund.

SEC. 2. New Chapter. A new Chapter 5.26 is added to Title 5, Revenue and Finance, of the Wrangell Municipal Code to read:

Chapter 5.26
**INVESTMENT POLICY, OBJECTIVES, AND GUIDELINES
FOR THE SWIMMING POOL FUND**

Sections:

- 5.26.010 Scope of investment policy.
- 5.26.020 Investment policy statement.
- 5.26.030 Delegation of authority.
- 5.26.040 Definitions.
- 5.26.050 Assignment of responsibility.
- 5.26.060 General investment principles.
- 5.26.070 Investment management policy.
- 5.26.080 Investment objectives.
- 5.26.090 Specific investment goals; distribution of earnings.
- 5.26.100 Definition of risk.
- 5.26.110 Liquidity.
- 5.26.120 Marketability of assets.
- 5.26.130 Investment guidelines.
- 5.26.140 Selection of investment managers.
- 5.26.150 Investment manager performance review and evaluation.
- 5.26.160 Investment policy review.

5.26.010 Scope of investment policy.

This investment policy reflects only investment policy, objectives, and constraints of the swimming pool fund and does not amend or change any of the policies for investment of borough general funds herein above.

5.26.020 Investment policy statement.

This statement of investment policy is set forth by the City and Borough of Wrangell regarding its swimming pool fund in order to:

- A. Define and assign the responsibilities of all involved parties.
- B. Establish a clear understanding for all involved parties of the investment goals and objectives of plan assets.

C. Offer guidance and limitations to all investment managers regarding the investment of plan assets.

D. Establish a basis for evaluating investment results.

E. Manage plan assets according to prudent standards as established in common trust law.

F. Establish the relevant investment horizon for which the plan assets will be managed.

In general, the purpose of this statement is to outline a philosophy and attitude which will guide the investment management of the plan assets toward the desired results. It is intended to be sufficiently specific to be meaningful, yet flexible enough to be practical.

5.26.030 Delegation of authority.

The City and Borough of Wrangell is a fiduciary, and is responsible for directing and monitoring the investment management of plan assets. As such, the City and Borough of Wrangell will from time to time delegate certain responsibilities to professional experts in various fields. These include, but are not limited to:

A. Investment Management Consultant. The consultant may assist the City and Borough of Wrangell in establishing investment policy, objectives, and guidelines; selecting investment managers; reviewing such managers over time, measuring and evaluating investment performance, and other tasks as deemed appropriate.

B. Investment Manager. The investment manager has discretion to purchase, sell, or hold the specific securities that will be used to meet the plan's investment objectives.

C. Custodian. The custodian will physically (or through agreement with a subcustodian) maintain possession of securities owned by the plan, collect dividend and interest payments, redeem maturing securities, and effect receipt and delivery following purchases and sales. The custodian may also perform regular accounting of all assets owned, purchased, or sold, as well as movement of assets into and out of the plan accounts.

D. Additional specialists such as attorneys, auditors, actuaries, retirement plan consultants, and others may be employed by the City and Borough of Wrangell to assist in meeting its responsibilities and obligations to administer plan assets prudently.

The City and Borough of Wrangell will not reserve any control over investment decisions, with the exception of specific limitations described in this Chapter. Managers will be held responsible and accountable to achieve the objectives herein stated. While it is not believed that the limitations will hamper investment managers, each manager should request modifications which they deem appropriate.

If such experts employed are also deemed to be fiduciaries, they must acknowledge such in writing. All expenses for such experts must be customary and reasonable, and will be borne by the plan as deemed appropriate and necessary.

5.26.040 Definitions.

- A. “Plan” shall mean the City and Borough of Wrangell swimming pool fund.
- B. “The City and Borough of Wrangell” shall refer to the borough assembly which shall administer the plan as specified by applicable ordinance.
- C. “Fiduciary” shall mean any individual or group of individuals that exercise discretionary authority or control over fund management or any authority or control over management, disposition or administration of the plan assets.
- D. “Investment manager” shall mean any individual, or group of individuals, employed to manage the investments of all or part of the plan assets.
- E. “Investment management consultant” shall mean any individual or organization employed to provide advisory services, including advice on investment objectives and/or asset allocation, manager search, and performance monitoring.
- F. “Securities” shall refer to the marketable investment securities which are defined as acceptable in this statement.
- G. “Investment horizon” shall be the time period over which the investment objectives, as set forth in this statement, are expected to be met. The investment horizon for this plan is 20 years.

5.26.050 Assignment of responsibility.

A. Responsibility of the Investment Managers. Each investment manager must acknowledge in writing its acceptance of responsibility as a fiduciary. Each investment manager will have full discretion to make all investment decisions for the assets placed under its jurisdiction, while observing and operating within all policies, guidelines, constraints, and philosophies as outlined in this statement. Specific responsibilities of the investment managers include:

1. Discretionary investment management including decisions to buy, sell, or hold individual securities, and to alter asset allocation within the guidelines established in this statement.
2. Reporting, on a timely basis, quarterly investment performance results.

3. Communicating any major changes to economic outlook, investment strategy, or any other factors which affect implementation of investment process, or the investment objective progress of the plan's investment management.
4. Informing the City and Borough of Wrangell regarding any qualitative change to investment management organization. Examples include changes in portfolio management personnel, ownership structure, investment philosophy, etc.
5. Voting proxies, if requested by the City and Borough of Wrangell, on behalf of the plan, and communicating such voting records to the investment committee on a timely basis.

B. Responsibility of the Investment Consultant. The investment consultant's role is that of a nondiscretionary advisory to the City and Borough of Wrangell. Investment advice concerning the investment management of plan assets will be offered by the investment consultant, and will be consistent with the investment objectives, policies, guidelines and constraints as established in this statement. Specific responsibilities of the investment consultant include:

1. Assisting in the development and periodic review of investment policy.
2. Conducting investment manager searches when requested by the investment committee.
3. Providing "due diligence," or research, on the investment manager(s).
4. Monitoring the performance of the investment manager(s) to provide the investment committee with the ability to determine the progress toward the investment objectives.
5. Communicating matters of policy, manager research, and manager performance to the City and Borough of Wrangell.
6. Reviewing plan investment history, historical capital markets performance and the contents of this investment policy statement to the City and Borough of Wrangell when necessary.

5.26.060 General investment principles.

- A. Investments shall be made solely in the interest of the beneficiaries of the plan.
- B. The fund shall be invested with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims.

C. Investment of the fund shall be so diversified as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

D. The City and Borough of Wrangell may employ one or more investment managers of varying styles and philosophies to attain the fund's objectives.

E. Cash is to be employed productively at all times, by investment in short-term cash equivalents to provide safety, liquidity, and return.

5.26.070 Investment management policy.

A. Preservation of Capital. Consistent with their respective investment styles and philosophies, investment managers should make reasonable efforts to preserve capital, understanding that losses may occur in individual securities.

B. Risk Aversion. Understanding that risk is present in all types of securities and investment styles, the City and Borough of Wrangell recognizes that some risk is necessary to produce long-term investment results that are sufficient to meet the plan's objectives. However, the investment managers are to make reasonable efforts to control risk, and will be evaluated regularly to ensure that the risk assumed is commensurate with the given investment style and objectives.

C. Adherence to Investment Discipline. Investment managers are expected to adhere to the investment management styles for which they were hired. Managers will be evaluated regularly for adherence to investment discipline.

5.26.080 Investment objectives.

The investment objectives for the swimming pool fund are both short term and long term in nature:

A. The short term objective over the first 5 years is to establish the fund and invest on the more conservative side of the asset allocation parameters.

B. The long term objective is to slowly balance the investment portfolio in order to increase earnings over the long term and to review the distribution formula set out in Section 5.26.090D after the first five years so that a larger portion will remain in the fund each year allowing the fund to grow.

C. Objectives for both the short term and long term will be to provide funding for the Swimming Pool Special Revenue Fund which supports the operations and maintenance of the swimming pool, to grow the principal over time, and to avoid excessive risk.

5.26.090 Specific investment goals; distribution of earnings.

A. The goal of each investment manager, over the investment horizon, shall be to:

1. Meet or exceed the market index, or blended market index, selected and agreed upon by the investment committee that most closely corresponds to the style of investment management.
2. Display an overall level of risk in the portfolio which is consistent with the risk associated with the benchmark specified above. Risk will be measured by the standard deviation of quarterly returns.

B. Specific investment goals and constraints for each investment manager, if any, shall be incorporated as part of this statement of investment policy. Each manager shall receive a written statement outlining his specific goals and constraints as they differ from those objectives of the entire plan.

C. Distribution of earnings. Earnings of the swimming pool fund will provide income which can be used to help fund the Swimming Pool Special Revenue Fund. The actual amount of funds to be budgeted and transferred to the Swimming Pool Special Revenue Fund each year will be based on the following formula which uses a three year average:

$$A = ((E1 + E2 + E3)/3) \times 70\%$$

A= the amount that is budgeted for the upcoming year. The actual amount transferred in the upcoming year will be adjusted after the audit is completed and the exact earnings are known.

E1= Total return earned or expected to be earned in the current year when the budget is being prepared for the upcoming year.

E2= Actual total return earned in the previous year

E3= Actual total return earned two years back

In the implementation of this average basis, a projection of the following year earnings will be used in year one and multiplied by seventy percent, a projection of the following year earnings and one year actual in year two will be averaged and multiplied by seventy percent and a projection of the following year earnings and two years actual will be averaged and multiplied by seventy percent in year three and then can be fully implemented in projecting year four.

This formula will allow both a substantial amount of funding from the earnings to be transferred to the Swimming Pool Special Revenue Fund and some to help increase the investment fund over time. The formula will be reviewed every five years or more often to

assure the required funding outcome and fund growth are meeting the needs of the swimming pool.

Special situations:

1. In the event the fund's three year average is a loss, the borough assembly can make the decision whether or not to take money from the principal on a one time basis. If the borough assembly makes the decision to do this, the amount may not be more than 3% of the principal amount in the current year at year end.
2. In the event the amount calculated by the formula exceeds 5% of the principal amount projected at year end, only an amount of 5% will be transferred with any excess amounts to remain in the fund and added to the principal.

5.26.100 Definition of risk.

The City and Borough of Wrangell realizes that there are many ways to define risk. It believes that any person or organization involved in the process of managing the City and Borough of Wrangell swimming pool fund assets understands how it defines risk so that the assets are managed in a manner consistent with the plan's objectives and investment strategy as designed in this statement of investment policy. The City and Borough of Wrangell defines risk as:

A. The probability of not maintaining purchasing power over the plan's investment time horizon.

B. The possibility of surprises (upside or downside) in investment returns.

5.26.110 Liquidity.

To minimize the possibility of a loss occasioned by the sale of a security forced by the need to meet a required payment, the City and Borough of Wrangell will periodically provide investment counsel with an estimate of expected net cash flow. The City and Borough of Wrangell will notify the investment consultant in a timely manner, to allow sufficient time to build up necessary liquid reserves.

5.26.120 Marketability of assets.

The City and Borough of Wrangell requires that all plan assets be invested in liquid securities, defined as securities that can be transacted quickly and efficiently for the plan, with minimal impact on market price.

5.26.130 Investment guidelines.

A. Allowable Assets.

1. Cash Equivalents.

- a. Treasury bills;
- b. Money market funds;
- c. STIF funds;
- d. Commercial paper;
- e. Banker's acceptances;
- f. Repurchase agreements;
- g. Certificates of deposit.

2. Fixed Income Securities.

- a. U.S. government and agency securities;
- b. Corporate notes and bonds;
- c. Mortgage backed bonds;
- d. Preferred stock;
- e. Fixed income securities of foreign governments and corporations;
- f. Planned amortization class collateralized mortgage obligations (PAC CMOs) or other "early tranche" CMOs.

3. Equity Securities.

- a. Common stocks;
- b. Convertible notes and bonds;
- c. Convertible preferred stocks;
- d. American Depositary receipts (ADRs) of non-U.S. companies;
- e. Stocks of non-U.S. companies (ordinary shares).

4. Mutual Funds.

- a. Mutual funds which invest in securities as allowed in this statement.

5. Other Assets.

a. GICs.

B. Stock Exchanges. To ensure marketability and liquidity, investment advisors will execute equity transaction through the following exchanges: New York Stock Exchange; and NASDAQ over-the-counter market. In the event that an investment manager determines that there is a benefit or a need to execute transactions in exchanges other than those listed in this statement, written approval is required from the City and Borough of Wrangell.

C. Prohibited Assets. Prohibited investments include, but are not limited to, the following:

1. Commodities and future contracts;
2. Private placements;
3. Options;
4. Limited partnerships;
5. Venture-capital investments;
6. Real estate properties;
7. Interest-only (IO), principal-only (PO), and residual tranche CMOs;
8. Derivative investment.

D. Prohibited Transactions. Prohibited transactions include, but are not limited to, the following:

1. Short selling;
2. Margin transactions.

E. Asset Allocation Guidelines. Investment management of the assets of the City and Borough of Wrangell permanent fund shall be in accordance with the following asset allocation guidelines:

1. Aggregate Plan Asset Allocation Guidelines (at market value).

Asset Class	Minimum	Maximum	Preferred
Equities	35	65	50
Fixed Income	30	60	45
Cash Equivalents	and 5	15	5

2. The City and Borough of Wrangell may employ investment managers whose investment disciplines require investment outside the established asset allocation guidelines. However, taken as a component of the aggregate plan, such disciplines must fit within the overall asset allocation guidelines established in this statement. Such investment managers will receive written direction from the City and Borough of Wrangell regarding specific objectives and guidelines.

3. In the event that the above aggregate asset allocation guidelines are violated, for reasons including but not limited to market price fluctuations, the City and Borough of Wrangell will instruct the investment manager(s) to bring the portfolio(s) into compliance with these guidelines as promptly and prudently as possible. In the event that any individual investment manager's portfolio is in violation with its specific guidelines, for reasons including but not limited to market price fluctuations, the City and Borough of Wrangell expects that the investment manager will bring the portfolio into compliance with these guidelines as promptly and prudently as possible without instruction from the investment committee.

F. Diversifications for Investment Managers. The City and Borough of Wrangell does not believe it is necessary or desirable that securities held in the plan represent a cross-section of the economy. However, in order to achieve a prudent level of portfolio diversification, the securities of any one company or government agency should not exceed five percent of the total fund, and no more than 15 percent of the total fund should be invested in any one industry. Individual treasury securities may represent five percent of the total fund, while the total allocation to treasury bonds and notes may represent up to 100 percent of the plan's aggregate bond position.

G. Guidelines for Fixed Income Investments and Cash Equivalents.

1. Plan assets may be invested only in investment grade bonds rates (or equivalent) or better.

2. Plan assets may be invested only in commercial paper rates A1 (or equivalent) or better.

3. Money market funds selected shall contain securities whose credit rating at the absolute minimum would be rated investment grade by Standard and Poors, and/or Moody's.

5.26.140 Selection of investment managers.

The City and Borough of Wrangell's selection of investment manager(s) must be based on prudent due diligence procedures. A qualifying investment manager must be a registered investment advisor under the Investment Advisors Act of 1940, or a bank or insurance company. The City and Borough of Wrangell requires that each investment manager provide, in writing,

acknowledgement of fiduciary responsibility to the City and Borough of Wrangell swimming pool fund.

5.26.150 Investment manager performance review and evaluation.

Performance reports generated by the investment consultant shall be compiled at least quarterly and communicated to the City and Borough of Wrangell for review. The investment performance of total portfolios, as well as asset class components, will be measured against commonly accepted performance benchmarks. Consideration shall be given to the extent to which the investment results are consistent with the investment objectives, goals, and guidelines as set forth in this statement. The City and Borough of Wrangell intends to evaluate the portfolio(s) over at least a three-year period, but reserves the right to terminate a manager for any reason including the following:

A. Investment performance which is significantly less than anticipated given the discipline employed and the risk parameters established, or unacceptable justification of poor results.

B. Failure to adhere to any aspect of this statement of investment policy, including communication and reporting requirements.

C. Significant qualitative changes to the investment management organization.

D. The pleasure of the borough assembly.

Investment managers shall be reviewed regularly regarding performance, personnel, strategy, research capabilities, organizational and business matters, and other qualitative factors that may impact their ability to achieve the desired investment results.

5.26.160 Investment policy review.

To assure continued relevance of the guidelines, objectives, financial status and capital markets expectations as established in this statement of investment policy, the City and Borough of Wrangell plans to review investment policy at least annually.

SEC. 3. Classification. This ordinance is of a permanent nature and shall be codified in the Wrangell Municipal Code.

SEC. 4. Severability. If any portion of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

SEC. 5. Effective Date. This ordinance shall be effective upon adoption.

PASSED IN FIRST READING: _____, 2015.

PASSED IN SECOND READING: _____, 2015.

David L. Jack, Mayor

ATTEST:

Kim Lane, Borough Clerk

Agenda Item 13e

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

Approval of a budget amendment to spend CPV (Commercial Passenger Vessel) funds to match Trails Grant funds

Attachments:

1. Memo from Manager Jabusch

RECOMMENDED ACTION:

Move to approve the FLAP Mt. Dewey Trail grant and to authorize the matching portion in the amount of \$43,768 to come from Commercial Passenger Vessel reserve funds.

MEMORANDUM

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

**FROM: JEFF JABUSCH
BOROUGH MANAGER**

**SUBJECT: BUDGET AMENDMENT TO SPEND CPV (COMMERICAL PASSENGER
VESSEL) FUNDS TO MATCH TRAILS GRANT FUNDS**

DATE: MAY 4, 2015

Information:

Last year there was a discussion with the assembly about approving the conceptual trail plan, allowing the city to pursue planning, development and grant funds for trails in our community? The assembly at that time endorsed the concept for us to move forward. We have done that and are in line for grant funds to build the connecting trail from the Mount Dewey Trail on the back or Northeast side that would continue to go out through the muskeg with a gravel trail to connect to the road going to the airport near the Spur Road.

Both the Mt. Dewey Trail and the Nature Trail are extremely popular to both Wrangell's Residents and our visitors that come to town. We think this would add another section and using existing roads would help connect the two main trails the city has at this time. There are other trails being considered, but this was thought to be the first choice.

The matching funding being requested is from the Commercial Passenger Vessel (CPV) reserve funds. The borough receives these funds in most years as a sharing program from the head tax collected by the state for cruise ship passengers. This money is required to be spent on tourism development and improvements to infrastructure. Other things we have done with the money is the new banners purchased last year and we are also spending some of the money on the Front Street green areas this year.

It shows in the draft budget on page 49 that we will have about \$65,734 as of June 30, 2015. The total project cost is estimated at \$484,700 and the required match is 9.03% or \$43,768. Although we have an estimate, the actual amount to do this work will not be known until the design is completed and bids are received. This has a twofold benefit for Wrangell. It would provide a job that local contractors could do and also this trail should be a low maintenance trail that will enhance the existing trail system we currently have. The matching requirement would be met by the City & Borough of Wrangell through a subsequent Interagency Agreement, Project Memorandum of Agreement and a Match Agreement.

Attachment:
Grant Application

Recommended Motion:

Move to approve the acceptance of the FLAP Mt. Dewey Trail grant and to authorize the matching portion in the amount of \$43,768 to come from the Commercial Passenger Vessel reserve funds.

Agenda Item 13f

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

Approval to join other intervenors in the appeal of the Big Thorne Timber Sale *(item added by Assembly Member Decker)*

Attachments:

1. email correspondence re: lawsuit
2. Summary Judgment Order, dated 3-20-2015

RECOMMENDED ACTION:

Move to approve joining other intervenors in the appeal of the Big Thorne Timber Sale, and to pay an additional \$3000 for this purpose.

From: Jon Bolling [<mailto:jbolling@aptalaska.net>]
Sent: Thursday, April 30, 2015 7:49 AM
To: 'Julie Decker'
Subject: RE: Timber Lawsuits

Good morning Julie.

In response to your e-mail from Tuesday, I have pasted below three recent e-mail reports from our attorneys on the case.

- The first, dated March 20, is a brief notice from our attorneys that the federal district court judge ruled in our favor.
- The second e-mail report, dated April 9, summarizes the pending appeal process to the Ninth Circuit Court of Appeals, with an explanation why the environmental groups are unlikely to prevail at the appellate level, based on the federal district court's written opinion.
- The third e-mail, dated April 16, is notice from our attorneys that the Ninth Circuit Court denied the environmental groups' request for an emergency injunction to prevent roadbuilding and logging activities pending hearing their appeal.

A copy of the Federal District Court judge's decision on the case is attached here to share with the Assembly and staff at Wrangell.

If you or someone else at the borough would like more information on this, let me know.

Jon

From: Jim Clark [<mailto:jfclarkiii@gmail.com>]
Sent: Friday, March 20, 2015 2:04 PM
To: 'Jon Bolling'; 'Wes Tyler'; 'Jim Taro'; 'Tim McLeod'; 'Bob Grimm'; 'Deantha Crockett'; 'Everett Billingslea'; 'Dennis DeWitt'; 'Neil MacKinnon'; JP Tangen
Cc: 'Carl Portman'; 'Roger Schnabel'; hq@boyertowing.com; ssilver628@aol.com; 'John Sandor'; 'Jeff Jabusch'; danb@kgbak.us; 'Bill Moran'; KARLA@city.ketchikan.ak.us; hq@boyertowing.com; randyj@tylerrental.com; SherrySpurlock@aol.com
Subject: RE: Status Report

Great news! We won. The Court denied SEACC's and Cascadia's Summary Judgment motions and dismissed all three cases. (The 25 page Order is attached for your review). We have to be prepared for Plaintiffs to request an emergency PI from the Emergency Panel of the 9th Circuit while Plaintiffs file an appeal with the Ninth Circuit. But for today, this terrific. Thanks for your joining this action and sticking with us during all the twists and turns. Cheers, Jim and Steve.

From: Jim Clark [<mailto:jfclarkiii@gmail.com>]

Sent: Thursday, April 09, 2015 8:23 PM

To: 'Bob Grimm'; citymgr@city.ketchikan.ak.us; danb@kgbak.us; davechar@kpunet.net; dianaew@city.ketchikan.ak.us; 'DuRette Construction Co, Inc'; 'Everett Billingslea'; 'Frank Bergstrom'; 'Jim Taro'; 'Jodi Mitchell'; 'Jon Bolling'; jptangen@gci.net; 'Juneau Chamber'; 'Laura Skaer'; 'Paul Richards'; 'Roger Schnabel'; 'Scott Brandt Erickson'; ssiver628@aol.com; 'Tim McLeod'; 'Neil MacKinnon'; 'Mitch Seaver'

Cc: Deantha Crockett

Subject: RE: Update on BIG THORNE CASE

Good evening. This is to update you on the significant amount of briefing that has been filed in response to the environmentalists' motion for an emergency injunction pending appeal. The State, Viking, AFA/Southeast Conference, and all of you filed a Joint Opposition earlier today. The Forest Service filed a separate Opposition Brief today.

One of the key things we asked the Court to consider is the following:

By their Emergency Motion for Injunction Pending Appeal Appellants hope to cause the demise of Viking by halting the company's supply of logs from the Big Thorne Stewardship Sale pending the disposition of their appeals from the district court's rightful grant of summary judgment in favor of the Tongass National Forest's Big Thorne Project. The Dahlstrom Declaration avers that if an injunction pending appeal is ordered the Viking Lumber mill will shut down when it runs out of logs by mid-May 2015 and will close permanently by September 2015. (Dahlstrom Declaration, Paragraph 3). Assuming that briefing and a decision by the merits panel of the Ninth Circuit take a total of 12 months, this means that Plaintiffs will achieve their litigation aims as a practical matter even though the District Court found that their chance of prevailing on the merits was "low" and that "the project's anticipated restoration work under the careful eye of the Forest Service, combined with the obvious economic benefits that will flow, suggest the balance of equities tips solidly in favor of Defendants." (District Court Slip Op. at page 3).

We are heartened by the fact that the Ninth Circuit denied SEACC et al an injunction pending appeal in Logjam (a case involving wolves much like this one) even though Judge Burgess had determined that the balance of harms tilted "slightly" toward the enviros. [REDACTED]

[REDACTED]

Unlike Judge Burgess, Judge Beistline decided: "Moreover, the Court cannot conclude, based on the evidence before it, that the hardship balance "tips sharply" in favor of Plaintiffs. On the contrary, the project's anticipated restoration work under the careful eye of the Forest Service, combined with the obvious economic benefits that will flow, suggest the balance of equities tips solidly in favor of Defendants." In other words we won on the balance of hardships as well as on the merits. So our case before this panel is even stronger than it was in Logjam.

Attached to our Joint Opposition was a very strong declaration from Kirk Dahlstrom that points out that he will be out of logs by mid-May and have to shut down his operation at that time. If Viking doesn't get to begin logging by September it will close permanently. It also includes an excellent declaration from Bruce Dale, who is ADF&G's acting Director of Game, which says there is more than sufficient habitat to provide for wolves and deer.

The enviros will file their Reply Brief on Monday, April 13th. This will give the emergency panel through April 17th to decide. If there is no decision Viking will start logging on April 18th. We will keep you informed.

Please let us know if you have any questions. Regards, Jim and Steve.

From: Jim Clark [<mailto:jfclarkiii@gmail.com>]

Sent: Thursday, April 16, 2015 2:37 PM

To: 'Bob Grimm'; citymgr@city.ketchikan.ak.us; danb@kgbak.us; 'DuRette Construction Co, Inc'; 'Everett Billingslea'; 'Frank Bergstrom'; 'Jim Taro'; 'Jodi Mitchell'; 'Jon Bolling'; jptangen@gci.net; 'Laura Skaer'; 'Paul Richards'; 'Roger Schnabel'; 'Scott Brandt Erickson'; ssiver628@aol.com; 'Tim McLeod'; 'Neil MacKinnon'; 'Mitch Seaver'; randyj@tylerrental.com; cdahl630@gmail.com; Jeff Jabusch; 'Bill Moran'; Cory@samsontug.com; Deantha Crockett

Cc: Dennis DeWitt; Carl Portman

Subject: RE: Update on BIG THORNE CASE

Good afternoon. Just a little while ago, the 9th Circuit emergency panel denied the Emergency Injunction pending appeal filed by the environmental groups that were trying to stop Viking from commencing timber operations under its Big Thorne contract.

So, this is very good news. The minute order just sent to us by the Court says in relevant part: "**Appellants emergency motions for injunctive relief pending these consolidated appeals are DENIED.**"

The full case will be heard on an expedited basis, but will not be fully briefed until late in the summer. Then there will be oral argument. So, this case will likely take many months and a lot more work before it is decided.

There are no guarantees, but this was our most vulnerable point in the litigation; the Ninth Circuit often decides that cutting trees cannot be reversed and is thus irreparable damage to the plaintiffs. It is absolutely terrific that that did not happen in our case.

We will be contacting you soon to discuss how to proceed further in this case. There is still a lot of work to be done by our State/Viking/AFA and Southeast Conference/ and you all team.

Thanks and let us know if you have any questions. Regards, Jim and Steve.

From: Julie Decker [<mailto:juliedecker@gci.net>]
Sent: Tuesday, April 28, 2015 9:45 AM
To: 'Jon Bolling'
Subject: RE: Timber Lawsuits

A summary of the decision and the reasons the Judge decided in our favor would be helpful.

Julie Decker

P.O. Box 2138
Wrangell, AK 99929
Cell: 907-305-0586
juliedecker@gci.net

From: Jon Bolling [<mailto:jbolling@aptalaska.net>]
Sent: Tuesday, April 28, 2015 9:35 AM
To: 'Julie Decker'; 'Jeff Jabusch'
Subject: RE: Timber Lawsuits

Thanks for the reply Julie. I fully understand that this request has to bear the light of day during an assembly meeting. Let me know if I can provide any additional information to you.

Jon

From: Julie Decker [<mailto:juliedecker@gci.net>]
Sent: Tuesday, April 28, 2015 8:55 AM
To: 'Jon Bolling'; 'Jeff Jabusch'
Subject: RE: Timber Lawsuits

Jon,

Of course, I am just one vote on the Assembly, but I would support an additional contribution of a similar level that the City of Craig is considering. But there were several Assembly members that questioned additional contributions, so this will definitely be a point of debate.

Julie Decker

P.O. Box 2138
Wrangell, AK 99929
Cell: 907-305-0586
juliedecker@gci.net

From: Jon Bolling [<mailto:jbolling@aptalaska.net>]
Sent: Tuesday, April 28, 2015 8:10 AM
To: 'Jeff Jabusch'; Julie Decker
Subject: RE: Timber Lawsuits

Good morning Jeff and Julie.

As you no doubt heard, the judge in the federal district court phase of the Big Thorne timber sale litigation found that the timber sale complies with federal law and regulation, meaning that our side prevailed at the district court level. Thanks again to the City and Borough of Wrangell for its support in the litigation.

As you may also have heard the plaintiff group has appealed to the Federal Ninth Circuit Court of Appeals. The attorneys for our intervenor group have already been working on the supporting our position at the Ninth Circuit, while working with the US Forest Service, State of Alaska, and Viking Lumber as they did in the district court.

Because the cash contributions made by each of us last fall in our intervenor group was intended to cover costs for the district court litigation, I am writing to ask if Wrangell will consider another cash contribution toward the legal costs. Craig is prepared to make another contribution, and Tyler Rental has also agreed to help fund the legal fees at the court of appeals level. I plan to ask the Craig city council for a \$3,000 contribution, which is what Tyler has agreed to. By the way, all the parties in our intervenor group will be asked to consider a contribution for the cost related to the appeal phase.

Is Wrangell willing to make another contribution to this effort? I will call later today to check in on this. In the meantime, feel free to call or e-mail me with any questions.

By the way, I have attached for you the information sheet on the Big Thorne sale and litigation that I sent to Wrangell last fall when this issue first came up.

Thanks for considering this.

Jon Bolling
Craig City Administrator

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

IN RE BIG THORNE PROJECT AND
2008 TONGASS FOREST PLAN

Case No. 1:14-cv-0013-RRB
(Consolidated with 1:14-cv-0014-
RRB and 1:14-cv-0015-RRB)

**ORDER DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SUMMARY
JUDGMENT IN FAVOR
OF DEFENDANTS**

I. INTRODUCTION

In the consolidated matter before the Court, Southeast Alaska Conservation Council, Alaska Wilderness League, National Audubon Society, Natural Resources Defense Council, Sierra Club, Cascadia Wildlands, Center for Biological Diversity, Greater Southeast Alaska Conservation Community, Greenpeace, and The Boat Company ("Plaintiffs") have challenged timber development in the Tongass National Forest that has been considered and approved by the United States Forest Service.

Plaintiffs claim violations of the National Environmental Policy Act ("NEPA"), the National Forest Management Act ("NFMA"), and the 2008 Amended Tongass National Forest Land and

ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT - 1
1:14-cv-0013-RRB

Resource Management Plan (“2008 Forest Plan”). Plaintiffs have also challenged the 2008 Forest Plan as failing to comply with NFMA. Prior to consolidation, Plaintiffs filed motions for summary judgment at **Docket 32** (1:14-cv-13), Docket 26 (1:14-cv-14), and Docket 28 (1:14-cv-15). The Defendants United States Forest Service, United States Department of Agriculture, Beth Pendleton, and Forrest Cole, (“USFS”) responded at Docket 58 (1:14-cv-13), Docket 64 (1:14-cv-14), and Docket 68 (1:14-cv-15). The Alaska Forest Association, the State of Alaska, the city of Craig, and Viking Lumber, Inc. (“Intervenors”) also filed responses in opposition to Plaintiffs’ motions for summary judgment at Docket 57 (1:14-cv-13), Docket 62 (1:14-cv-14), and Docket 69 (1:14-cv-15). Plaintiffs reply at Docket 68 (1:14-cv-13), Docket 68 (1:14-cv-14), and Docket 72 (1:14-cv-15). In their responsive filings, USFS moves for summary judgment.

Plaintiffs also have requested oral argument at Docket 28 (1:14-cv-15) and to strike portions of Intervenors’ response in opposition at Docket 66 (1:14-cv-14). Motions for preliminary injunction have also been made by Plaintiffs at Docket 85 (1:14-cv-13) and Docket 78 (1:14-cv-15). As a preliminary matter, the Court grants Plaintiffs’ unopposed motion for judicial notice at Docket 70 (1:14-cv-14). Plaintiffs seek declaratory and injunctive relief from USFS, asking the Court to prevent the commencement of timber activities scheduled to begin April 1, 2015.

II. GOVERNING PROVISIONS

A. NFMA

The National Forest Management Act (“NFMA”) requires the Forest Service to manage the National Forest System through a two-tiered land management process.¹ The first tier calls for “land

¹ 16 U.S.C. §§ 1600 et seq.; 16 U.S.C. § 1604(a).

and resource management plans,” commonly referred to as forest plans, which define allowed uses in various parts of the forest, establish management goals, and set standards and guidelines for site-specific forest management.² Forest Plans must also provide for sustained yield and balance multiple uses: they must coordinate outdoor recreation range, timber, watershed, wildlife and fish, and wilderness uses.³ After a forest plan is developed, all subsequent agency actions must comply with NFMA and the governing forest plan.⁴ The second tier consists of project-level decisions which govern actual on-the-ground actions such as timber sales. Substantively, NFMA requires that forest plans “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area.”⁵

B. NEPA

The National Environmental Policy Act (“NEPA”) contains additional procedural requirements to be followed whenever the federal government proposes actions with environmental consequences.⁶ Its purpose is to ensure the decision-maker will have detailed information on environmental impacts and provides that information to the public.⁷ The Forest Service must prepare

² 16 U.S.C. § 1604(a), (e), (g); *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 966 (9th Cir. 2003).

³ 16 U.S.C. § 1604(e).

⁴ 16 U.S.C. § 1604(i).

⁵ 16 U.S.C. § 1604(g)(3)(B).

⁶ 42 U.S.C. §§ 4321 et seq.; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350–51 (1989).

⁷ *Ecology Center v. Castaneda*, 574 F.3d 652, 656-57 (9th Cir. 2009) (citing *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 758 (9th Cir. 1996)).

an Environmental Impact Study (EIS), which identifies environmental effects and alternative courses of action, when undertaking any management project.⁸ ““In contrast to NFMA, NEPA exists to ensure a process, not to mandate particular results.””⁹ Under NEPA, the agency need only take a “hard look” at its proposed action.¹⁰ So long as “the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.”¹¹

However, the EIS “must respond explicitly and directly to conflicting views in order to satisfy NEPA’s procedural requirements.”¹² When additional or updated information is made available to the agency after the close of the decision-making process, the agency may need to prepare a Supplemental Environmental Impact Statement (“SEIS”) in order to address the new information.¹³ Although not specifically mentioned in NEPA, agencies may utilize a supplemental information report (“SIR”) to evaluate the new information and to evaluate whether it impacts the approved action.¹⁴

⁸ *Id.* at 657.

⁹ *Id.* (quoting *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1063 (9th Cir. 2002)).

¹⁰ *Id.* at 1070.

¹¹ *Robertson*, 490 U.S. at 350.

¹² *Earth Island Institute v. U.S. Forest Service*, 442 F.3d 1147, 1172 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 1829 (2007), *abrogated on other grounds*, *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365 (2008).

¹³ 23 C.F.R. § 771.130

¹⁴ *Idaho Sporting Cong. Inc. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000)

C. TTRA

The Tongass Timber Reform Act (“TTRA”), which amended portions of the Alaska National Interest Lands Conservation Act (“ANILCA”), provides that the Forest Service is to “seek to provide a supply of timber from the Tongass National Forest that (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.”¹⁵ The Forest Service is still “[s]ubject to appropriations, other applicable law, and the requirements of the [NFMA]” in meeting timber demand and must remain “consistent with providing for the multiple use and sustained yield of all renewable forest resources.”¹⁶ At a minimum, the TTRA “requires the Forest Service to at least consider market demand and seek to meet market demand.”¹⁷

III. FACTUAL BACKGROUND

The Tongass National Forest, established September 10, 1907, covers nearly 17 million acres across southeastern Alaska. Pursuant to the requirements of NFMA, the Forest Service adopted a revision of the Tongass National Forest Land and Resource Management Plan in 1997 (“1997 Forest Plan”). In response to the Ninth Circuit's decision in *Natural Resources Defense Council, et al. v. United States Forest Service, et al.*, the 1997 Forest Plan was subsequently amended through a

¹⁵ 16 U.S.C. § 539d(a).

¹⁶ *Id.*

¹⁷ *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 809 (9th Cir. 2005).

Record of Decision (“ROD”) issued on January 23, 2008, (“2008 Forest Plan”).¹⁸ Relevant to the present matter, two local species are identified within the 2008 Forest Plan as management indicator species (“MIS”): the Sitka black-tailed deer (“deer”) and the Alexander Archipelago wolf (“wolf”).¹⁹ Using MIS the 2008 Forest Plan requires the Forest Service to “[p]rovide the abundance and distribution of habitat necessary to maintain viable populations of existing native and desirable introduced species well distributed in the planning area.”²⁰

Located within the northern portion of Prince of Wales Island and encompassing approximately 232,000 acres is the Big Thorne area. On June 28, 2013, USFS, through a ROD signed by the Forest Supervisor, approved the Big Thorne project and provided the relevant FEIS. The Big Thorne Project approved the logging of approximately 6,186 acres of old growth forest and construction of 46.1 miles of new Forest Service roads. Plaintiffs objected to any logging taking place and filed timely administrative appeals of the ROD and FEIS. After review, the Regional Forester affirmed the decision approving the Big Thorne project. However, implementation of the Big Thorne project was halted by the Regional Forester until a SIR was prepared to address concerns raised by Plaintiffs on appeal.²¹ Specifically, the SIR was to address the post-ROD statements of Dr. David Person on the detrimental effects of the Big Thorne project on the wolf population.

¹⁸ 421 F.3d 797 (9th Cir.2005).

¹⁹ AR 603_1592, at 6-10 (Sitka black-tailed deer); *Id.* at WILD1.XIV (Alexander Archipelago Wolf).

²⁰ *Id.* at WILD1.II.B.

²¹ AR 736_4573.

The Wolf Task Force—comprised of two members from each of the three agencies involved: the Forest Service, the Fish and Wildlife Service, and Alaska Fish and Game—was convened to aid in the review and preparation of the SIR. The task force was ultimately split in its review of the additional information and wolf population impacts. In the absence of a consensus from the task force, the Forest Supervisor issued a Final SIR on August 19, 2014, affirming the approval of the Big Thorne project and the Regional Forester officially concurred with the findings of the Final SIR on August 21, 2014. Viking Lumber Company, Inc. successfully bid on the timber contract under the Big Thorne project on September 30, 2014, and ground disturbing activities are set to commence April 1, 2015, pending the outcome of this litigation.²²

Any additional facts are well known to the parties and are set forth in detail in the parties' pleadings. In the interest of brevity those additional facts are not repeated here except to the extent it may be necessary to understand the Court's ruling on the pending motions.

IV. STANDARD OF REVIEW

The Administrative Procedure Act governs this Court's review of the actions of USFS on remand. “Agency decisions that allegedly violate. . . NEPA and [the] NFMA are reviewed under the Administrative Procedure Act (‘APA’), and may be set aside only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”²³ This review is to be

²² AR 736_4610.

²³ *Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 889 (9th Cir. 2007) (quoting *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1008–09 (9th Cir. 2006), 5 U.S.C. § 706(2)(A)).

“searching and careful,” but the arbitrary and capricious standard is narrow.²⁴ This Court cannot substitute its own judgment for that of the agency.²⁵ An agency's decision is arbitrary and capricious if it fails to consider important aspects of the issue before it, if it supports its decisions with explanations contrary to the evidence, or if its decision is either inherently implausible or contrary to governing law.²⁶

V. DISCUSSION

Plaintiffs have brought both site-specific challenges to the Big Thorne timber project as well as a substantive challenge to the governing 2008 Forest Plan. The Court must first decide whether the project was in compliance with the plan in effect at the time of the site-specific decision in order for the forest plan challenge to be ripe.²⁷ The Court therefore first addresses Plaintiffs' challenges to the Big Thorne project, followed by their challenges to the 2008 Forest Plan.

A. Big Thorne Project

Plaintiffs challenge USFS's actions at nearly every phase of the Big Thorne project. The following are those challenges and arguments by Plaintiffs that the Court finds to be the most meritorious in addressing the consolidated motions for summary judgment.²⁸

²⁴ *In Def. of Animals, Dreamcatcher Wild Horse & Burro Sanctuary v. U.S. Dep't of Interior*, 751 F.3d 1054, 1061 (9th Cir. 2014) (quoting *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 858 (9th Cir. 2005)).

²⁵ *Id.*

²⁶ *Id.* (quoting *The Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005)).

²⁷ *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161 (9th Cir. 2011).

²⁸ Any other arguments not referenced herein should be considered to be found to be without merit by the Court.

First, Plaintiffs challenge the reasoning for USFS to consider the Big Thorne project (Market Demand). Second, Plaintiffs challenge the completeness of the information considered by USFS in coming to the decision to approve the Big Thorne project (Current Wolf Population Estimates). Third, Plaintiffs challenge the explanation given by USFS supporting the decision to approve the Big Thorne project (Sustainable Wolf Population under Big Thorne). Fourth, Plaintiffs assert that the decision-making process leading to the approval of the Big Thorne project was incomplete (Disclosure of Impacts to Wolves). Finally, Plaintiffs challenge USFS's treatment of additional input after the approval decision was made (Necessity of a SEIS).

1. Market Demand

Plaintiffs argue that USFS acted arbitrarily when it relied upon outdated projections of timber demand in evaluating the need and scope of the Big Thorne project. Plaintiffs argue that the failure to conduct any “reality check” on the projections constituted an arbitrary act by USFS. The projections in question stem from the Brackley Report (2006) and its 2008 addendum, which were prepared by economists for USFS.²⁹ The report evaluates demand in all markets—foreign and domestic—and the amount of timber volume required to produce the products the market would utilize.³⁰ The problem, according to Plaintiffs, is that the report predates the collapse of the home mortgage and housing markets beginning in 2008, which has had a negative impact on the markets for Alaska timber, and the projections are significantly larger than recent harvest levels.

²⁹ AR 736_1628; AR 736_1629; AR 736_2244, at 678–79.

³⁰ AR 603_1592, App. G, at G-6–G-7.

USFS points out that the Brackley Report was not a short term report, as it analyzed trends over forty years—from 1965 to 2004—for three key parameters to project demand for a twenty-year period from 2005 to 2025.³¹ Additionally, market demand is not the only constraint on actual harvest level in the Tongass in recent years. Policy, funding, and litigation—as the Court is acutely aware—have all had an impact on harvest levels. There is no indication that USFS ignored the 2008 market crash, and in fact the record indicates that USFS addressed the current market and found that domestic housings lumber needs "were on the rise" and demand for Alaskan timber was “expected to increase.”³²

Plaintiffs also challenge USFS’s use of the Morse methodology to determine the timber to be offered and the volume under contract. Experts for USFS utilized the Morse methodology, which takes the timber market demand from the Brackley report, to determine volume of timber to offer for sale in a given year, to set the annual amount of timber to be offered and the volume under contract goal.³³ It was the opinion of USFS experts that the best way to arrive at a long-term volume under contract goal was using the Morse methodology to convert projected market demand.³⁴

While Plaintiffs may disagree with the use of the Morse methodology, preferring an express reliance on projected harvests, that does not mean that USFS has erred. If USFS intends for the projected "harvest" to meet market demand, it is not unreasonable for USFS to use a methodology

³¹ *Id.* at G-4; Brackley Report (2006), AR 736_1628, at 25.

³² AR 736_4007 at 25.

³³ AR 736_2244 at 681.

³⁴ *Id.* at 681-82.

that factors projected demand in order to determine the proper amount to offer and to place under contract.

Ultimately, USFS “has recognized expertise and discretion in predicting timber demand.”³⁵ This includes both reliance on the Brackley report generally, as well as USFS's use of the “Expanded Lumber” scenario.³⁶ Although there are differing expert opinions, Plaintiffs have not shown USFS' reliance on the expert report, methodology, and ultimate calculations of market demand was unreasonable. The Court, in its review, is only to ensure that the USFS's decision was a reasonable one, “not the best or most reasonable, decision.”³⁷ **Accordingly, the Court finds that USFS's assessment of the timber market demand, including reliance on the Brackley Report and the Morse methodology, was reasonable and does not render the decision approving the Big Thorne project to be arbitrary and capricious.**

2. Current Wolf Population Estimates (NEPA)

Plaintiffs assert that the Big Thorne FEIS failed to comply with the requirements of NEPA by omitting consideration of wolf population information from USFS's analysis. USFS argues that the wolf population information was simply not included because it was not essential to the decision-making process, and therefore not required.

There is no question that when evaluating reasonably foreseeable significant adverse effects in an EIS, an agency must not only indicate unavailability or incompleteness of related information,

³⁵ *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 746 F.3d 970, 978 (9th Cir. 2014).

³⁶ AR 736_2244 at 679.

³⁷ *National Wildlife Fed'n v. Burford*, 871 F.2d 849, 855 (9th Cir. 1989).

but also must obtain and include that incomplete information if it "is essential to a reasoned choice among alternatives."³⁸ USFS expressly acknowledged not only the incompleteness of information on wildlife populations generally, but also that the information presently available was sufficient for a reasoned choice between the alternatives and disclosure of possible adverse environmental consequences.³⁹ Incomplete knowledge of the wolf population was specifically noted and the FEIS stated that the effects of the Big Throne project are within the range of effects projected after full implementation of the 2008 Forest Plan.⁴⁰

Plaintiffs argue that a current wolf population estimate for the area was designated as a "critical need" by USFS in the Big Thorne SIR.⁴¹ However, this indication was with regard to the development of a Wolf Habitat Management Plan under the 2008 Forest Plan, not the Big Thorne project.⁴² While beneficial, a Wolf Habitat Management Plan is not required by NEPA, NFMA, or even the 2008 Forest Plan prior to a site-specific project.⁴³

Additionally, the Wolf Task Force conclusions do not undermine USFS's determination that current wolf population estimate was not essential. While part of the Wolf Task Force felt that there was a need for additional information, it only recommended USFS consider actions to reduce the

³⁸ 40 C.F.R. § 1502.22.

³⁹ AR 736_2244 at 84.

⁴⁰ *Id.* at 183-84.

⁴¹ AR 736_4559 at 9;

⁴² AR 603_1593 at 4-95.

⁴³ *See Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 496-99 (9th Cir. 2014).

risk until that information was available.⁴⁴ Moreover, the Court must uphold an agency's reasonable decision "even if the administrative record contains evidence for and against its decision."⁴⁵ Differing opinions from individuals in sister agencies or even from within the agency do not require deference from USFS in reaching its final determination, nor do they change the Court's review of the final action. USFS fully considered the various viewpoints from the task force and the draft SIR before reaching its final decision.⁴⁶

USFS not only identified the incomplete and missing current wolf population estimates, but also provided explanation as to why that information was not considered essential to a reasoned choice among the alternatives in the Big Thorne FEIS. USFS has met the regulatory requirements for incomplete information. **Therefore, the Court finds that USFS did not violate section 1502.22 of NEPA.**

3. Sustainable Wolf Population under Big Thorne (NFMA)

Plaintiffs also argue that USFS violated NFMA by providing an arbitrary explanation on how Big Thorne is consistent with the 2008 Forest Plan. Specifically, Plaintiffs challenge how the approval of the Big Thorne project can still provide enough deer habitat to support a sustainable wolf population, i.e. one that does not decline.⁴⁷

⁴⁴ AR 736_4244 at 14.

⁴⁵ *Modesto Irrigation Dist. v. Gutierrez*, 619 F.3d 1024, 1036 (9th Cir. 2010) (quotation omitted).

⁴⁶ AR 736_4559 at 6-11, 15-26.

⁴⁷ *See infra* Part V.B.2.

Under the NFMA, USFS must demonstrate that a site-specific project will be consistent with the Forest Plan.⁴⁸ The 2008 Forest Plan utilizes the interagency deer habitat capability model (“deer model”) to evaluate the relative differences between project alternatives that may affect deer habitat capability at the scale of the WAA (“Wildlife Analysis Area”) or of groups of WAAs, or even forest-wide.⁴⁹

The 2008 Forest Plan calls for the implementation of a “Forest-wide program,” in cooperation with ADF&G and USFWS, to assist in maintaining long-term sustainable wolf populations.⁵⁰ The forest-wide Standard and Guideline WILD1.XIV.A is the provision which addresses sustainability of wolf populations.⁵¹ USFS is to “[p]rovide, **where possible**, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.”⁵² The provision also notes that “[t]his is generally considered to equate to the habitat capability to support 18 deer per square mile . . . where deer are the primary prey of wolves.”⁵³

While Plaintiffs assert that any action under the 2008 Forest Plan must preserve a deer habitat capability of 18 deer per square mile in each WAA, that is simply not required by either

⁴⁸ 16 U.S.C. § 1604(i); *Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2010)(en banc).

⁴⁹ AR 736_4587, at 1; 2008 Forest Plan FEIS, AR 603_1591, at 3-232.

⁵⁰ AR 736_0002 at 258 (Standard and Guideline WILD1.XIV.A).

⁵¹ *Id.*

⁵² *Id.* (emphasis added).

⁵³ *Id.*

NFMA or the 2008 Forest Plan. To understand this, it is important to draw distinction, as USFS did in the Big Thorne FEIS, between wolf population *viability* and *sustainability*. The required provision for wolf population, under NFMA and the 2008 Forest Plan, is *viability* of the wolf population, i.e. sufficient numbers to avoid extinction.⁵⁴ USFS explained in the Big Thorne FEIS that to maintain viable wolf populations under the Forest Plan, per the recommendation of a dedicated committee, a deer density of at least five deer per mile squared must be maintained in areas where deer are the wolves' primary prey.⁵⁵ USFS enunciated that wolf population *viability* has a high likelihood of being maintained under implementation of the Big Thorne project and Plaintiffs have not disputed this, challenging instead wolf population *sustainability*.⁵⁶ Again, sustainability involves maintaining the population at a given level, while viability involves maintaining the population at such a level that it does not become extinct.

Wolf population sustainability is only provided for in Standard and Guideline WILD1.XIV.A.2, as discussed above. However, the standard and guideline in paragraph A.2 provides for flexibility and discretion. In providing deer habitat capability, USFS is to first look at whether it is *possible* to provide for sufficient deer habitat capability to maintain sustainable wolf populations.⁵⁷ Then USFS is to *consider* providing enough deer habitat capability to meet human

⁵⁴ See 16 U.S.C. § 1604(g)(3)(B); AR 603_1593 at 4-89 (2008 Forest Plan). See *infra* Part V.B.2.

⁵⁵ AR 736_2244 at 835. Plaintiffs have disputed USFS's use of this metric for wolf viability in their challenge to the 2008 Forest Plan. See *infra* Part V.B.2.

⁵⁶ *Id.* at 849.

⁵⁷ AR736_0002 at 258.

harvest needs.⁵⁸ Additionally, the habitat capability to support 18 deer per square mile represents the required density to meet *both* sustainable wolf populations and all human harvest needs.

Based on the plain language of the 2008 Forest Plan, the deer habitat capability provision is a guideline to ensure consideration and evaluation of deer habitat needs in USFS's exercise of discretion, not a bare minimum deer density requirement for all agency actions. This interpretation comports with USFS's duty to balance conflicting objectives in pursuing its multiple-use mandate under NFMA and the 2008 Forest Plan.⁵⁹

In the Big Thorne FEIS, USFS explained that timber volume from the Tongass National Forest is being offered under this project to fulfill the multiple-use mission of the Forest Service under NFMA and TTRA.⁶⁰ USFS also repeatedly stated that *none* of the project area WAAs presently support 18 deer per square mile, nor would they achieve this even under the no-action alternative."⁶¹ However, USFS did note that not only had it considered the impacts on wolf population, but that "WAAs in the project area are within the percentage change to deer habitat capability disclosed by the 2008 Forest Plan FEIS with full implementation of the Plan" and that "this was a consideration in determining viability at the scale of the Forest."⁶² USFS also made a

⁵⁸ *Id.*

⁵⁹ See *Tongass Conservation Soc. v. U.S. Forest Service*, 385 Fed. Appx. 708, 711 (C.A.9 (Alaska), 2010)("[T]he Forest Service's approval of a project that would result in less than eighteen deer per square mile was reasonable in light of the conflicting objectives of the Forest Plan"); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 900 (9th Cir.2002).

⁶⁰ AR 736_2244 at 676.

⁶¹ *Id.* at 184, 246, 250, 251, 260, 836, 839, 850. 862.

⁶² AR 736_2244 at 836.

clear distinction between the implication of the Big Thorne project on both the sustainability and viability of wolf population.⁶³ With regard to the projects impact on wolves, USFS also noted that it considered the large adjacent reserve areas as well as input from “experts with local knowledge,” clearly indicating reliance on more than just deer modeling in coming to its final decision.⁶⁴

The Court finds sufficient basis to support USFS's explanation and approval of the Big Throne project. USFS considered the ability to provide sufficient deer habitat to meet both the viability and sustainability of wolf populations, and where that sustainability was not presently possible, USFS appropriately exercised its discretion.

4. Disclosure of Impacts to Wolves (NEPA)

Plaintiffs argue that USFS failed to fully and fairly disclose and analyze the potential adverse consequences of the Big Thorne project on wolf populations in violation of NEPA. In particular, they allege that the FEIS did not respond explicitly to Dr. Person's dissenting scientific opinion and did not adequately address concerns or disclose the effects of the projects impacts to wolf population.

NEPA requires that the agency make every effort to disclose and discuss in the draft EIS all major points of view on the environmental impacts of the alternatives, including the proposed action.⁶⁵ Then in the FEIS, the agency must respond to all comments and discuss “any responsible

⁶³ *Id.* at 729.

⁶⁴ *Id.* at 849. The Court does not find that USFS was justifying lower deer habitat capability areas within the Big Thorne project by relying on adjacent old growth reserve areas, but rather reinforcing the forest-wide scope of the standard and guideline along with the mobile nature of the wolf population.

⁶⁵ 40 C.F.R. § 1502.9(a).

opposing view which was not adequately disclosed in the draft [EIS] and shall indicate the agency's response to the issues raised.”⁶⁶ However, NEPA does not “require the Forest Service to affirmatively present every uncertainty in its EIS.”⁶⁷

The Court finds that USFS did address those statements and differing opinions expressed by Dr. Person during the decision-making process, with the exception of those statements made *after* the FEIS and ROD were issued.⁶⁸ But even in that case, the Regional Forester halted implementation of the Big Thorne project until Dr. Person’s concerns could be evaluated by the Wolf Task Force and their report could be evaluated in the SIR.⁶⁹ USFS argues that although “Dr. Person obviously disagrees with the Forest Service’s rationale for approving the Big Thorne Project. . . .that disagreement does not invalidate the Forest Service’s decision or suggest the Agency simply ignored Dr. Person’s views, much less establish a NEPA violation.” The Court agrees.⁷⁰

The Court is also unpersuaded by Plaintiffs’ assertion that USFS failed to address the consequences of the Big Thorne project's impacts to the wolf population. The FEIS has numerous references and discussions on the projects impacts to the wolf population, including direct and indirect impacts such as loss of potential denning sites, pack dispersal and increased susceptibility

⁶⁶ *Id.* § 1502.9(b).

⁶⁷ *McNair*, 537 F.3d at 1001.

⁶⁸ *See* AR 736_2244, at 656.

⁶⁹ AR 736_4244, at 14

⁷⁰ *See Native Ecosys. Council v. Weldon*, 697 F.3d 1043, 1051 (9th Cir. 2012).

to trapping.⁷¹ The FEIS also explained that the Project's authorization of road densities slightly higher than those that now exist would not be likely to substantially increase wolf harvest.⁷² **The Court finds that USFS did sufficiently, and in a reasonable manner, disclose and address the impacts to the wolf population and therefore did not violate NEPA.**

5. Necessity of a Supplemental Environmental Impact Statement

Plaintiffs' last area of challenge to the Big Thorne project is in USFS's treatment of additional information received after the FEIS and ROD were issued. In particular, Plaintiffs argue that a SEIS, in addition to or in place of a SIR, was necessary to address the issues raised by Dr. Person's August 15, 2013, statement.⁷³ USFS maintains that the information was not significant and therefore a SIR was the only necessary and appropriate action.

A SIR has a very narrow and specific purpose of answering the question of whether new information or circumstances are significant. If the result of the SIR is a finding of significance, no matter the scale, then any further analysis of that information must comply with NEPA procedures and a Supplemental EIS must be prepared.⁷⁴ The use of a SIR by USFS to evaluate Dr. Person's 2013 statement was appropriate to determine if this new information—which included some of his old concerns as well—was significant.

⁷¹ AR 736_2244 at 850.

⁷² *Id.* at 261.

⁷³ AR 736_4529

⁷⁴ *See* 40 C.F.R. § 1502.9(c)(4); FSH 1909.15, § 18; *Idaho Sporting Cong. Inc.*, 222 F.3d at 566.

In reviewing an agency's decision not to prepare an SEIS, the Court must review the records only to ensure that the agency has made a "reasoned decision based on its evaluation of the significance—or lack of significance—of the new information."⁷⁵ The record reflects that USFS did not disregard or easily dismiss Dr. Person's statement.⁷⁶ On the contrary, project implementation was placed on hold and a task force was convened to thoroughly evaluate the information he raised. The Wolf Task Force acknowledged the concerns raised by Dr. Person, but ultimately concluded that the complex interactions at play in the project area "were evaluated in the USFS EIS and Record of Decision."⁷⁷ Ultimately, USFS utilized a task force and SIR to take a hard look at Dr. Person's statement and determined that the new impacts he suggested were not significantly different from those already considered, which kept USFS fully compliant with NEPA.⁷⁸ **The Court finds that USFS's use of the SIR and determination of no significant new information was appropriate. A SEIS was therefore not required and USFS did not violate NEPA.**

B. The 2008 Forest Plan

Because a Forest Plan itself "does not give anyone a legal right to cut trees, nor does it abolish anyone's legal authority to object to trees being cut," a challenge to a Forest Plan is not ripe unless brought in the context of a site-specific implementation of that plan.⁷⁹ As the Court has found

⁷⁵ *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372-75 (1989).

⁷⁶ AR 736_4559; AR 736_4563; AR 736_4571.

⁷⁷ AR 736_4244, at 14

⁷⁸ *N. Idaho Cmty. Action Network v. U.S. DOT*, 545 F.3d 1147 (9th Cir. 2008); *see also Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989).

⁷⁹ *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998) *accord Ecology Ctr., Inc. v. U.S. Forest Serv.*, 192 F.3d 922, 925-926 (9th Cir. 1999).

that the Big Thorne project did not violate NEPA, NFMA, or the 2008 Forest Plan, the Court can now move to address Plaintiffs' challenge to the 2008 Forest Plan.

As an initial matter, the Court finds that the adoptions of the 2008 Forest Plan, and its accompanying FEIS, constitute final agency action that the Court has jurisdiction to review.⁸⁰ Additionally, the Plaintiffs have standing to challenge that action, and their claims are now ripe.⁸¹

Plaintiffs challenge the 2008 Forest Plan for violations of both NEPA and NFMA related to impacts to sustainable wolf populations. First, Plaintiffs allege that the 2008 Forest Plan FEIS violated NEPA by providing insufficient discussion of adverse environmental effects, failing to acknowledge the environmental consequences of logging exclusively in wolf habitat, and failing to explain how wolf viability can be maintained with no obligation to maintain sustainable wolf population. Second, Plaintiffs assert that the approval of the 2008 Forest Plan violates NFMA because the record indicated deer habitat already below the threshold for sustainable wolf populations and the Forest Plan provides no enforceable standard for deer habitat or road density to maintain a viable wolf population.

1. Challenges under NEPA

In reviewing the 2008 Forest Plan FEIS, the Court's role is only to ask whether the FEIS "contains a reasonably thorough discussion of the significant aspects of the probable environmental consequences" and to ensure that both USFS and the public have the information reasonably

⁸⁰ *Bennett v. Spear*, 520 U.S. 154 (1997); *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1516 (9th Cir. 1992)

⁸¹ *See Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726 (1998); *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 816 (9th Cir. 2005); *Sierra Forest Legacy*, 646 F.3d at 1161.

necessary to evaluate the alternatives being considered.⁸² The Court finds that the 2008 Forest Plan FEIS did provide sufficient discussion of the impact and effects to the wolf population, including the effects of timber harvest and addressing the cumulative impacts.⁸³ Additionally, USFS also provided sufficient information and reasonable discussion regarding wolf population viability under the 2008 Forest Plan and was not required to explain how the 2008 Forest Plan would provide for sustainable wolf populations which was not a required agency standard or statutory mandate. **The Court finds that the 2008 Forest Plan FEIS discussion was “reasonably thorough” and took the requisite hard look at the environmental consequence consistent with the requirements of NEPA.**

2. Challenges under NFMA

Although restyled and reframed in a variety of ways by Plaintiffs, the challenge to the 2008 Forest Plan under NFMA, and to an extent NEPA as well, is at its core a dispute over the difference between *viable* wolf populations and *sustainable* wolf populations. Plaintiffs repeatedly draw an incorrect connection between the statutory obligation to preserve a *viable* wolf population and the deer habitat capability necessary for a *sustainable* wolf population. As the Court has alluded to earlier in discussing the Big Thorne project, the meaning of a *viable* population and a *sustainable* population are distinct and not interchangeable.⁸⁴

⁸² *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1206–07 (9th Cir. 2004); *see also Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004).

⁸³ AR 603_1591 at 3-236 to 3-238, 3-281 to 3-285. *Natural Res. Def. Council*, 421 F.3d at 813.

⁸⁴ *See supra* Part V.A.3.

A viable population is defined as having “the estimated numbers and distribution of reproductive individuals to insure its continued existence.”⁸⁵ Although not specifically defined within the 2008 Forest Plan or NFMA, a sustainable population is one “capable of being maintained or continued at a certain rate or level,” or “able to last or continue for a long time.”⁸⁶ While a sustainable population indicates a wolf population that will not decrease into the future, a viable population is only one that will not meet with extinction. It is entirely possible for an action to maintain enough deer habitat capability to preserve the wolf population’s existence, but still result in a decline in the population. While the deer habitat capability level necessary for a *sustainable* wolf population would also maintain *viability*, this is simply not a statutory or agency requirement.

As the Court has noted, NFMA requires that the Tongass National Forest “be managed to maintain viable populations of existing native and desired non-native vertebrate species.”⁸⁷ A viable population does require enough distributed habitat to support “a minimum number of reproductive individuals,” but there is no affirmative requirement for the agency to establish a precise standard at the forest plan level of what size or density of population constitutes that minimum for viability.⁸⁸ In other words, NFMA is clear in the threshold requirement of a viable population, but allows

⁸⁵ 36 C.F.R. § 219.19 (2000).

⁸⁶ Oxford English Dictionary Online, Oxford University Press, <http://www.oed.com> (Mar. 2015); Merriam-Webster Online Dictionary, Merriam-Webster, Inc., <http://www.merriam-webster.com> (Mar. 2015).

⁸⁷ 36 C.F.R. § 219.19 (2000); *see also* 16 U.S.C. § 1604(g)(3)(B).

⁸⁸ At the project level, USFS was able to respond to challenges to viability of the wolf population, identifying a minimum deer habitat capability necessary for viability in the project area—five deer per square mile—based on recommendations from its experts. AR 736_2244 at 729, 835.

flexibility to the agency in determining what a viable population looks like. The “inherent flexibility of the NFMA” comports with the challenging balance USFS must maintain in achieving its required multiple-use goals of recreation, environmental protection, and timber harvest.⁸⁹

In seeking to meet the minimum requirement of viability, the 2008 Forest Plan actually maintains a heightened goal for wolf population: sustainability. Rather than set a minimum floor for the wolf population, the deer habitat capability provision in WILD1.XIV.A.2 sets the high mark for the deer habitat capability USFS wants to meet the needs of wolves and humans alike. The addition of the qualifier “where possible” and inclusion of factors beyond modeling, act to put the plain language of the 2008 Forest Plan in line with the overarching spirit of NFMA. Under the 2008 Forest Plan, the Standard and Guideline WILD1.XIV.A no longer binds USFS to a heightened standard for deer density—that was unattainable, conflicted with competing objectives, and beyond the statutory requirement—but still preserved the agency’s aspirations for future wolf population.

It is clear that Plaintiffs desire the 2008 Forest Plan to include an explicit value for the minimum deer habitat capability necessary to support *viability* of wolf populations, as well as a numerical value for road density. Indeed, the Court agrees that fixed metrics throughout USFS’s wolf conservation strategy would make future challenges based to timber decisions which impact wolf populations—and their review by the courts—simpler. However, Plaintiffs have not pointed to any specific statutory requirement for such an explicit minimum threshold, nor does this Court find there to be any. This is because “NFMA does not ‘specify precisely how’ the Forest Service

⁸⁹ *Earth Island Inst. v. Carlton*, 626 F.3d 462, 470 (9th Cir. 2010) (*quoting McNair*, 537 F.3d 981 at 993-94); *Natural Res. Def. Council*, 421 F.3d 797, 809 & n.22.

must demonstrate that it has met the objectives of the pertinent forest plan.⁹⁰ Again, this is congruent with the sort of flexibility necessary to balance the objectives of NFMA.

The Court does not, however, intend for this flexibility to be construed as unenforceability. Agency actions under the 2008 Forest Plan are still subject to evaluation for their impact on wolf population viability and compliance with USFS's wolf conservation strategy, which do set limits on just how flexible the agency can be. However, in the present case the challenge was for the failure to meet a flexible guideline rather than a statutory requirement.⁹¹ **Accordingly, the Court finds that the 2008 Forest Plan does not violate NFMA.**

VI. CONCLUSION

For the reasons outlined above and the reasons set forth in USFS's pleadings, Plaintiffs' Motions for Summary Judgment at **Docket 32** (1:14-cv-13), **Docket 26** (1:14-cv-14), and **Docket 28** (1:14-cv-15) are hereby **DENIED** and summary judgment is **GRANTED** in favor of Defendants. Accordingly, Plaintiffs' Request for Oral Argument, the Motion to Strike at **Docket 66** (1:14-cv-14), the Motion for Preliminary Injunction at **Docket 72** (1:14-cv-13), and the Motion for Preliminary Injunction at **Docket 78** (1:14-cv-15) are all hereby **DENIED** as moot. This matter is hereby **DISMISSED** in its entirety.

IT IS SO ORDERED this 20th day of March, 2015.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

⁹⁰ *Earth Island Inst.*, 626 F.3d at 470 (quoting *McNair*, 537 F.3d at 992).

⁹¹ *McNair*, 537 F.3d at 994.

Agenda Item 13g

CITY & BOROUGH OF WRANGELL

BOROUGH ASSEMBLY AGENDA ITEM May 12, 2015

INFORMATION:

Discussion regarding direction for the Hospital Board Liaison

Attachments:

1. None.

RECOMMENDED ACTION:

Assembly Discussion.

Agenda Item 14

CITY & BOROUGH OF WRANGELL

**BOROUGH ASSEMBLY
AGENDA ITEM
May 12, 2015**

INFORMATION:

ATTORNEY'S FILE – None

Agenda Item 15

CITY & BOROUGH OF WRANGELL

**BOROUGH ASSEMBLY
AGENDA ITEM
May 12, 2015**

Executive Session - None