

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 2010-30

A RESOLUTION OF THE CITY AND BOROUGH OF SITKA TO ENTER INTO A CONSERVATION EASEMENT WITH SOUTHEAST ALASKA LAND TRUST REGARDING TIDELANDS ADJACENT TO LOT 8 OF THE SHELDON JACKSON CAMPUS SUBDIVISION, ACCEPT OWNERSHIP OF LOT 8 FROM SOUTHEAST ALASKA LAND TRUST UPON ITS ACQUISITION OF THIS PARCEL FROM SHELDON JACKSON COLLEGE, WITH LOT 8 SUBJECT TO THE CONSERVATION EASEMENT, AND AUTHORIZE THE MUNICIPAL ADMINISTRATOR TO EXECUTE ALL NECESSARY DOCUMENTS

WHEREAS, Southeast Alaska Land Trust ("Trust") is a private, not-for-profit organization whose mission is to work with communities and willing land owners to ensure that vital natural areas remain in place for the benefit of each generation; and

WHEREAS, Trust is involved in assisting with a mitigation project known as the Sitka Airport Runway Safety Area and Partial Parallel Taxiway Improvements Project ("Airport Project") to address the Airport Project's impact on marine resources; and

WHEREAS, Trust has identified certain tidelands and uplands properties in Sitka for a conservation easement that could be used as mitigation credits towards the Airport Project, as well as for other projects; and

WHEREAS, City and Borough of Sitka ("CBS") is the owner of these tidelands properties ("Tidelands Properties"), which consists of approximately 5.18 acres at Area A and 1.71 acres in Area B, adjoining Lot 8 of the Sheldon Jackson Campus Subdivision, with Area B currently being leased to the National Park Service; and

WHEREAS, Sheldon Jackson College is the owner of the uplands property adjoining the CBS' Tidelands Properties, at Lot 8, consisting of approximately .65 acres; and

WHEREAS, Trust is currently negotiating the purchase of Lot 8 of the Sheldon Jackson Campus Subdivision from Sheldon Jackson College; and

WHEREAS, Trust proposes to give CBS ownership of Lot 8 with restricted use for a Sea Walk, and subject to a conservation easement, with Trust retaining the mitigation credits for the Airport Project or for its own use; and

1           **WHEREAS**, Trust also proposes to pay the CBS the appraisal price of \$248,000  
2 for a conservation easement on CBS tidelands property at Area A, retaining the  
3 mitigation credits for the Airport Project;

4  
5           **WHEREAS**, Trust has negotiated with the National Park Service to terminate its  
6 lease with the CBS regarding Area B if CBS will enter into a conservation easement with  
7 the Trust regarding this tidelands property, with the CBS retaining the mitigation credits  
8 for its own use based on CBS entering into the conservation easement with the Trust; and  
9

10           **WHEREAS**, this proposal will not only satisfy Airport Project mitigation  
11 requirements, it will provide CBS an opportunity to “bank” mitigation credits to offset  
12 aquatic resource impacts from future CBS projects; and  
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14           **WHEREAS**, the conservation easement will contain provisions that will  
15 permanently protect the natural resources and the scenic integrity of the Tidelands; and  
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17           **WHEREAS**, the Assembly previously approved on September 14, 2010 directing  
18 the Municipal Attorney to prepare the necessary documents to address the Airport Project  
19 which would involve accepting ownership from the Trust of Lot 8 with certain  
20 restrictions and selling a conservation easement to the Trust on the adjoining tidelands.  
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22  
23 **NOW, THEREFORE, BE IT RESOLVED** by the Assembly for the City and Borough  
24 of Sitka:

25  
26           **Section 1.** Municipal Administrator is authorized to enter into a conservation  
27 easement for the Tidelands Properties (Areas A and B), as well as for Lot 8 upon its  
28 acquisition by the CBS from the Trust, in substantially the same form as the document  
29 attached to this resolution, and execute all necessary and related documents upon review  
30 and approval of the documents by the Municipal Attorney, which shall be based on the  
31 following:  
32

- 33           A. CBS shall enter into a conservation easement with the Trust  
34 regarding tidelands property adjoining to Lot 8 of the Sheldon  
35 Jackson Campus Subdivision, which consists of 5.18 acres at Area  
36 A, and 1.71 acres at Area B;
- 37           B. Termination of the tidelands lease between CBS and the National  
38 Park Service regarding Area B, is being negotiated by the Trust,  
39 contingent upon the CBS entering into the conservation easement  
40 with the Trust that would include Area B ;

- 1 C. Trust shall pay CBS the appraised value of \$248,000 for the  
2 conservation easement for Area A, with the Trust retaining the  
3 mitigation credits for the Airport Project;  
4 D. Trust shall give Lot 8 to CBS as part of the consideration for the  
5 CBS entering into this conservation agreement, with restricted use of  
6 the property for a Sea Walk, and with Trust retaining any mitigation  
7 credits for the Airport Project or its own use; and  
8 E. CBS shall be eligible to obtain and bank the mitigation credits for its  
9 own use regarding Area B upon its entering into a conservation  
10 easement with the Trust regarding this tidelands property.

11  
12 **Section 2.** This resolution shall become effective the day after the date of its  
13 passage.

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15 **PASSED, APPROVED AND ADOPTED** by the Assembly of the City and Borough of  
16 Sitka, Alaska, on this 9th day of November, 2010.

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18  
19 \_\_\_\_\_  
20 Cheryl Westover  
21 Mayor

22 ATTEST:


23 \_\_\_\_\_  
24 Colleen Ingman, MMC  
Municipal Clerk



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

## MEMORANDUM

**TO:** Assembly  
**FROM:** Theresa Hillhouse, Municipal Attorney   
**RE:** Conservation Easement Related to Resolution 2010-30  
**DATE:** November 23, 2010

The purpose of this memorandum is to address issues raised by Assembly members and/or the public at the last Assembly meeting regarding the Conservation Easement ("Easement") related to Resolution 2010-30. A revised copy of the Easement is attached that makes clarifying amendments and adds additional provisions that are underlined to address concerns expressed at the last meeting.

### A. Termination Provision

A termination provision has been negotiated with the Trust, subject to Assembly approval. A new Section XVI has been added to the Easement and cross-referenced in Section XVII(I) if CBS ("Grantor") terminates the Easement. Please note that the Trust is not willing to have Lot 8 simply deeded back to the Trust, unless it has Area A. However, because the request for a termination provision was premised on CBS wanting to do something different with Area A (i.e. expand Crescent Harbor), this was not an acceptable proposal.

1. Trust Operational Costs. Grantor pays the Trust an operational cost equal to 3% on any money owed to the Trust under the Termination provision. This cost is to reimburse the Trust for costs associated with having to reinvest the money into other properties. No payment would be required if Grantor gives alternative sites that have equivalent mitigation credits or transfers equivalent mitigation credits to the Trust.

AND

2. Full Reimbursement.
  - a. Grantor pays Easement FMV for Area A; and
  - b. Grantor pays appraised value of Lot 8 minus Grantor's improvement costs.

OR

3. Alternative to Full Reimbursement.
  - a. Grantor enters into conservation easement with Trust for alternative mitigation site(s) that have equal mitigation credits to those awarded for the Easement Properties; OR
  - b. Grantor enters into conservation easement with Trust for alternative mitigation site(s) that have equal mitigation credits to those awarded for

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- Area A, and pays appraised value of Lot 8 minus Grantor's improvement costs; OR
- c. Grantor transfers mitigation credits to the Trust equal to those awarded for Area A, and pays appraised value of Lot 8 minus Grantor's improvement costs.

**B. Motorized Vessels**

Motorized vessels were not intended to be prohibited on tideland properties covered by the Easement. Clarifying language has been added to the Easement at Sections V and VI to make this clear. Please note as explained by the Trust's representative at the last Assembly meeting, anchoring or mooring on the tidelands is restricted in Section VI(B)(4) to prevent damage to the eel grass and other ecosystems.

**C. Permitted Uses Subject to Review**

Concern was expressed at the Assembly meeting that certain permitted uses of the Properties still required Trust notification and/or approval under Section VIII. However, the only activities requiring such notification and/or approval concern Lot 8 regarding the sea walk, which is a project still in concept and design stage. This is further clarified by amendment to Section VIII(A).

**D. Mutuality regarding Enforcement Actions**

Concern was expressed that CBS would have to pay the Trust's judicial enforcement action of court costs and attorney fees. However, this provision in Section IX(B) would only occur if the Trust was declared the "prevailing party" by the Courts. If CBS is the "prevailing party," the Trust pays CBS costs and attorney fees. This provision has mutual application for the parties, and is the general procedure followed by the Courts regarding these contract type claims.

**E. Assignment of Easement**

Concern was expressed about Assignment Section XIV, that allows the Trust to transfer the Easement to another entity with only notice and not Grantor approval. However, this Section makes it clear that the only entity eligible for any such transfer is one recognized by IRC Section 170(h), which is specially qualified to address such conservation issues, and that must meet other criteria. Additional cross references to IRC Section 170(h) was added to the Easement at Section XIV for clarification purposes.

**Attachment**

cc: Jim Dinley, Municipal Administrator  
Michael Harmon, Public Works Director

## CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT("EASEMENT") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by the City and Borough of Sitka ("CBS" or "Grantor"), whose address is 100 Lincoln Street, Sitka, Alaska, 99835, to Southeast Alaska Land Trust ("Trust"), an Alaska non-profit corporation, whose address is 119 Seward Street, Suite #2, Juneau, Alaska, 99801, collectively referred to as "Parties."

### **I. Recitals**

- A. Grantor is the sole owner of certain real tidelands properties in Crescent Bay ("the Tidelands Properties") in Sitka, Alaska, containing approximately 5.18 acres in Area A and 1.71 acres in Area B, and more particularly described in attached Exhibit A, incorporated into this Easement by this reference. Area B has been leased to the National Park Service.
- B. Trust is the sole owner of certain real property adjoining the Tidelands Properties (the "Riparian Property"), containing approximately .65 acres and depicted as Lot 8 of the Sheldon Jackson Campus Subdivision, Plat # 2009-8, Sitka Recording District. That plat is also included in the attached Exhibit A.
- C. Grantor enters into this Easement with Trust regarding these Tidelands Properties and the Riparian Property, collectively referred to as "Properties."
- D. As consideration for this Easement, Trust conveys the Riparian Property to Grantor, reserving any mitigation credits. Trust also pays to Grantor the appraised value for the Easement on Area A, amounting to \$248,000. However, Trust retains the mitigation credits for Area A for purposes set out in subsection D below. Trust has also negotiated with the National Park Service to terminate its lease with Grantor, which allows for Grantor to enter into this Easement regarding Area B, with the Grantor retaining all the mitigation credits for Area B for its own use.
- E. Context. United States Army Corp of Engineers permit issued to the Alaska Department of Transportation and Public Facilities (DOTPF) and dated September 24, 2010, approved the construction of the Sitka Airport Runway Safety Area and Partial Parallel Taxiway Improvements Project ("Airport Project"), noticed as #POA-2006-0410. To mitigate the Airport Project's impacts to marine resources, special permit condition 11 requires compensatory mitigation at a 2 to 1 ratio for 2.13 habitat functional units impacted at the Airport Site. The preferred mitigation project is described within "A Final Mitigation Plan for Marine Impacts of the Sitka Airport Runway Safety Area and Partial Parallel Taxiway Improvement", dated August 24, 2010." Establishment of this Easement on the Tidelands Property in Area A and on the Riparian Property implements the final steps of the compensatory mitigation for the Airport Project impacts.

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust                      Grantor*

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F. CBS Assembly, on \_\_\_\_\_, 2010, affirmed its commitment to the preservation of the conservation values of the Properties by its approval of Resolution No. \_\_\_\_\_ and this Easement.

G. Conservation Values. The Properties possesses natural marine habitats, productive plant communities, scenic, open space, educational, and recreational values ("Conservation Values") of great importance to Grantor, the people of Sitka, Alaska, and the State of Alaska.

Specifically, the Properties consist of a biologically diverse marine ecosystem and contains valuable habitat, a scenic, riparian shoreline, and open space. The tide flats support productive plant communities including microalgae, macroalgae and eelgrass. Of particular ecological importance are the eelgrass (*Zostera marina*) beds that are designated as special habitat areas under the Clean Water Act. Given the close proximity of the anadromous Indian River, maintaining this habitat adds to the integrity of this system.

In addition to the intertidal ecosystem functions that will be protected, the Properties will provide significant value to the educational, scenic and cultural character of Sitka. Their proximity to the Sitka National Historic Park protects and extends the natural quality of the entrance to the Park. Further, subject to the terms of this Easement, CBS will enhance the educational value of the site by developing a segment of the Sea Walk across Lot 8 and posting interpretive environmental signs. The Riparian Property provides a 270 degree panoramic view with prominent views to the south and west towards Sitka Sound and Mount Edgecumbe's volcanic cone. Sitka visitors and local citizens are often seen exploring its beach, fishing, or pausing to sit on one of its characteristic boulders. This Easement will ensure the protection of an extended belt of coastline highly valued by the Sitka community.

H. Baseline Documentation. The specific Conservation Values of the Properties are further documented in an inventory of relevant features of the Properties, dated \_\_\_\_\_, 2010, on file at the offices of the Trust ("Baseline Documentation"), and incorporated by this reference as attached Exhibit B. The Baseline Documentation consists of reports, maps, photographs, and other documentation that the Parties agree to provide an accurate representation of the Properties at the time of the grant of this Easement, and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement. Grantor and Trust further agree that within three months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Trust, and incorporated into Exhibit B by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of this Easement or any of its provisions. The Parties agree that in the event a controversy arises with respect to the nature and extent of the intent of this Easement, the Parties

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

Initials by:  
Trust                      Grantor

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shall not be foreclosed from using all other relevant or material documents, surveys, reports, and other information to assist in the resolution of the controversy.

- I. Continuation of Existing Uses. Grantor intends that the Conservation Values of the Properties be preserved and maintained by permitting the continuation of only those land uses on the Properties that do not impair or interfere with the Conservation Values. Such uses existing at the time of this Easement include research, educational, and recreational uses consistent with this Easement.
- J. Conveyance of Right to Protect Conservation Values. Grantor, as owner of the Properties, has the right to identify, preserve, and protect the Conservation Values of the Properties, and desires and intends to transfer such rights to Trust in perpetuity.
- K. Qualifications of Trust. Trust is a non-profit corporation qualified under Internal Revenue Code Sections 501(c)(3) and 170(h) and AS 34.17 *et. seq.* Trust is organized exclusively for scientific, charitable, and educational purposes, and it conserves lands in Alaska with significant natural and cultural values for the benefit of the general public.

**II. Conveyance and Consideration**

In consideration of the above Recitals, and the mutual covenants, terms, conditions, and restrictions contained in this Easement, and pursuant to the laws of the State of Alaska and the Alaska Uniform Conservation Act (AS 34.17 *et. seq.*), Grantor voluntarily grants and conveys to Trust, its successor and assigns, a conservation easement in perpetuity over the Properties as set forth in this Easement.

**III. Purposes**

The purposes of this Easement are to assure that the Properties will be retained forever as a relatively natural habitat for fish and wildlife and as public open space, and to prevent any use of, or activity on, the Properties that will impair or interfere with the Conservation Values of the Properties (the "Purposes"). Grantor intends that this Easement will confine the use of, or activity on, the Properties to such uses and activities that are consistent with the Purposes of the Easement.

**IV. Rights of Trust**

Grantor conveys, in perpetuity, the following rights to Trust, its successors and assigns:

- A. To identify, preserve, protect, and, if necessary, to restore the Conservation Values of the Properties in such a manner as Trust may deem necessary and appropriate;

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

Initials by:  
Trust                      Grantor  
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- B. To enter the Properties at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement, provided that such entry shall be upon prior reasonable notice to Grantor, and Trust shall not unreasonably interfere with any of Grantor's uses of the Properties; and
- C. To prevent or enjoin any activity or use of the Properties that is inconsistent with the Purposes of this Easement and to require or undertake restoration of the areas or features of the Properties which may be damaged by any activity or use that is inconsistent with the Easement.

**V. Uses and Activities Consistent with the Purposes of the Easement**

- A. Grantor reserves all rights accruing from ownership of Properties, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Properties that is not inconsistent with the Purposes of the Easement and that is not prohibited by this Easement.
- B. In addition to the general reservation of rights stated above, the following activities and uses are expressly reserved to Grantor:
  1. Unrestricted public access for pedestrians and non-motorized vehicles or craft, such as kayaks, rafts, ~~and~~ rowing skiffs, and motorized vessels, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Properties;
  2. Passive recreational activities such as shore walking, bird watching, sport fishing, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Properties;
  3. Research activities such as inventory and observation of flora and fauna found on the Properties, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Properties;
  4. Educational activities, such as Sea Week or other guiding school group activities, provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Properties;
  5. Sport fishing and subsistence activities that do not adversely impact the Conservation Values of the Properties and in accordance with State laws; and
  6. The use of motorized vessels, vehicles or equipment as may be necessary for the purpose of repairing, maintaining, or restoring the Conservation Values of the Properties or the Sea Walk as allowed in Section VII after giving notice to Trust in accord with Section VIII.

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
Trust                      Grantor  
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**VI. Uses and Activities Inconsistent with the Purposes of the Easement**

- A. Any use of, or activity on, the Properties inconsistent with the Purposes of this Easement is prohibited, and Grantor and Trust acknowledge and agree that they will not conduct, engage in or permit any such use or activity.
- B. Without limiting the generality of subsection A above, the following uses of or activities on the Properties, though not an exhaustive list, are inconsistent with the Purposes of this Easement and shall be prohibited, except as expressly provided for in Section VII:
1. The change, disturbance, alteration, or impairment of the significant ecological features and values of the Properties, or the destruction of other significant conservation interests in the Properties;
  2. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Properties, unless specifically allowed in Section VII;
  3. Use of any motorized or mechanized vehicles, not including vessels, on the Properties, on land or water, unless specifically allowed in Section VII;
  4. Moorage or anchorage of boats or any other type of vessel or vehicle on the Tidelands Properties;
  5. Any use or activity that would pollute or degrade or threaten to pollute or degrade the surface or subsurface waters on or underlying the Properties. Prohibited activities include but are not limited to discharge of effluent or sewage and use of herbicides and/or pesticides;
  6. Construction or placement of any floats, permanent moorage structures, buildings or other physical improvements or facilities on the Properties, unless specifically allowed in Section VII;
  7. Subdivision, portioning, or leasing of the Properties;
  8. The disposal or storage of rubbish, garbage, debris, vehicles, abandoned equipment, or other unsightly, offensive, or hazardous waste or material on the Properties;
  9. Commercial activity, including the placement of commercial signs, billboards, or other advertising material on the Properties; and

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust                      Grantor*  
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10. The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities.

**VII. Exceptions to the Limitations of Section VI of this Easement**

- A. After giving notice to Trust and in accord with Section VIII, CBS may construct a segment of a coastal Sea Walk across Lot 8 subject to the sighting and design guidelines listed below:
  1. Maintain the overall natural character of the Riparian Property;
  2. Keep tree removal to a minimum and preserve large mature trees;
  3. Span rock breaches when feasible;
  4. Allow for minor fill;
  5. Maintain a Sea Walk path with a hardened surface meeting ADA standards appropriate for large groups of pedestrians, wheelchairs, strollers, dog walkers and that promotes unobtrusive recreational exercise such as jogging and walking;
  6. Provide for nodes with covered seating, overlook areas and controlled beach access points;
  7. Provide for interpretive, educational signage;
  8. Allow for some clearing to maintain vistas; and
  9. Allow for equipment access to construct and maintain the Sea Walk while preserving the overall character of the Properties.

**VIII. Notice and Approval**

A. Notice

1. The purpose of requiring Grantor to notify Trust prior to undertaking certain permitted activities under Section VII is to afford Trust an opportunity to ensure that the proposed use or activity is designed and carried out in a manner consistent with the Purposes of this Easement.
2. Whenever notice is required, Grantor shall notify Trust in writing, not less than sixty days prior to the date Grantor intends to undertake the use or activity. The notice shall be sent by registered or certified mail, return receipt requested, to

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

Initials by:  
Trust                      Grantor  
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Southeast Alaska Land Trust, 119 Seward Street, Suite 2, Juneau, AK 99801 or such other addresses as Grantor may from time to time be informed of in writing by Trust.

3. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Trust to make an informed judgment as to its consistency with the Purposes of this Easement.
4. In the event that Trust requires additional information to evaluate the proposed use or activity, Trust shall request the information from Grantor as soon as practicable, and in any case not later than thirty (30) days after the receipt of the notice of the proposed use or activity.

#### B. Trust's Approval

1. Trust shall have sixty (60) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity. The 60-day period shall not begin until Trust has received adequate information from Grantor to evaluate the proposed activity.
2. Trust's approval may be withheld only upon a reasonable determination in writing by Trust that the use or activity as proposed would be inconsistent with the Purposes of the Easement. The Trust's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.
3. Trust's decision to approval or disapprove the use or activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address stated in this Easement, or to such other address as Trust may from time to time be informed of in writing by Grantor.
4. When approval is required under this Easement, and when such approval is not granted or denied within the time period and manner set forth in this subsection, approval of the permitted use or activity may be presumed.

#### C. Emergency Action

If Grantor must undertake emergency action to protect health or safety on the Properties or must act by and subject to compulsion of any governmental agency, Grantors may proceed with such action without Trust's approval but must notice Trust of the actions taken, within such time as is reasonable under the circumstances.

### IX. Trust's Remedies

#### A. Notice and Enforcement Action

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

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Trust                      Grantor  
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1. Grantor acknowledges that actual or threatened events of noncompliance with this Easement constitute immediate and irreparable harm, and Trust is entitled to invoke the equitable jurisdiction of the Alaska Superior Court at Sitka, Alaska to enforce this Easement.
2. If Trust determines that Grantor is in violation of the terms of this Easement, or that a violation is threatened, Trust shall give written notice to Grantor of the violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Properties resulting from any use or activity inconsistent with the Purposes of this Easement, to restore the portion of the Properties damaged by the violation.
3. Trust may bring an action if Grantor or any other party or agency fail to cure, or begin to cure the violation within thirty (30) days after receipt of written notice of Trust and continue the cure until complete.
4. Trust may bring an action at law or in equity in the Alaska Superior Court at Sitka to enforce the terms of this Easement to:
  - a. Enjoin the violation (*ex parte* as necessary) by temporary or permanent injunction as allowed by law;
  - b. Require the restoration of the Properties to the condition that existed prior to any injury; and
  - c. Recover any damages to which Trust may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for loss of scenic, aesthetic, or environmental values.
5. Without limiting Grantor's liability, Trust, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Properties.
6. If Trust, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Properties, Trust may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
7. Trust's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Trust's remedies at law for any violation of the terms of this Easement may be inadequate and that Trust may be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
Trust                      Grantor

which Trust may be entitled including specific performance of the terms of this Easement, without necessity of providing either actual damages or the inadequacy of otherwise available legal remedies.

8. Trust's remedies described in this section are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Costs of Enforcement

1. Any costs incurred by Trust in judicially enforcing the terms of this Easement against Grantor, including, without limitation, costs of a legal action and reasonable attorney fees, and costs of restoration necessitated by Grantor's violations of the terms of this Easement, shall be borne by Grantor.
2. If Trust initiates litigation against Grantor to enforce this Easement, and Grantor is a prevailing party, then the court may require Trust to reimburse all of Grantor's costs and reasonable attorney fees in defending the action.

C. Trust's Discretion

1. Enforcement of the terms of this Easement shall be at the sole discretion of Trust. Any forbearance by Trust to the exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Trust of the term breached or of any subsequent breach of the same or any other term of this Easement or of any of Trust's rights under this Easement.
2. No delay or omission by Trust in the exercise of any right or remedy upon any breach by Grantor shall impair the right or remedy or be construed as a waiver.

D. Waiver of Certain Defenses

In full knowledge of the provisions of this Easement, Grantor waives any claim or defense it may have against Trust under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

E. Acts Beyond Grantor's Control; Force Majeure

Nothing in this Easement shall be construed to entitle Trust to bring any action against Grantor for any injury to or change in the Properties resulting from causes beyond Grantor's control, including, without limitation, natural fires, flood, storm, earthquake, trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Properties resulting from causes beyond Grantor's control.

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust*                      *Grantor*  
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**X. Access by Public**

Access by the general public may not unreasonably interfere with the Conservation Values of the Properties. Persons or their pets may not hunt, harass, or act in a manner reasonably considered to be a threat to local wildlife. Sport fishing in accord with Section V, Subsection B (2) is expressly permitted.

**XI. Costs and Liabilities**

A. Responsibility for Costs and Liabilities

1. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Properties. Grantor shall keep the Properties free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.
2. The Trust shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Properties.
3. Nothing in this Easement confers on Trust the right or ability to exercise physical or managerial control over the day-to-day operations of the Properties for purposes of becoming an operator of the Properties within the meaning of CERCLA (Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601-9675).

B. Hold Harmless

Grantor shall hold harmless, indemnify, and defend Trust and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, cause of action, claims, demands, or judgments, including without limitation, reasonable attorney fees, arising from or in any way connected with (a) injury to or the death of any person, or physical damage to any Properties resulting from any act, omission, condition or other matter related to or occurring on or about the Properties, regardless of the cause, unless due solely to the negligence of the Indemnified Parties; (b) the obligations specified in this Easement; and (c) the existence or administration of this Easement.

**XII. Subsequent Transfer**

A. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in a deed or other legal instrument by which it divests itself of any interest in all or a portion of the Properties, including, without limitation, a leasehold interest;

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust                      Grantor*  
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2. Describe the Easement in and append it to any executory contract for the transfer of any interest in the Properties;
  3. Give written notice to Trust of the transfer of any interest in all or a portion of the Properties no later than forty-five (45) days prior to the date of such transfer. Such notice to Trust shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.
- B. Failure of Grantor to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way.

### **XIII. Amendment**

If circumstances arise under which an amendment to or modification of the Easement would be appropriate, Grantor and Trust may jointly amend the Easement, provided that any such amendment shall be consistent with the Purposes of the Easement, shall not affect its perpetual duration, and shall not impair any of the significant Conservation Values of the Properties. Any such amendment shall be recorded in the Office of the Recorder, Sitka Recording District in Sitka, Alaska.

### **XIV. Assignment and Succession**

#### **A. Assignment**

1. This Easement is transferable, but Trust may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue code of 1986, as amended (or any successor provision then applicable). As a condition of such transfer, Trust shall require that the transferee exercise its right under the assignment consistent with the Purposes of this Easement.
2. Trust shall notify Grantor in writing, at Grantor's last known address, in advance of an assignment. The failure of Trust to give such notice shall not affect the validity of the assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

#### **B. Succession**

In the event Trust ceases to be an organization capable of enforcing this Easement and has not named a successor organization, Trust's rights and obligations under this Easement shall become vested and fall upon one of the following named entities to the extent that they shall accept this Easement, in the following order:

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust                      Grantor*

\_\_\_\_\_

1. Such other entity, with purposes similar to Trust's, constituting a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable); or
2. Such organization(s) as may be designated under the doctrine of *cy pres* by a court of competent jurisdiction; provided that at the time of such designation, such entity shall be a qualified organization within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable).

**XV. Recordation**

Trust shall record this instrument in a timely fashion in the Office of the Recorder, Sitka Recording District, and in any other appropriate jurisdictions and may re-record it at any time as may be required to preserve its rights in this Easement. Failure to comply with this provision shall not invalidate the terms of this Easement.

**XVI. Termination**

If the Grantor terminates this Easement and/or exercises its power of eminent domain, in any, over the Properties subject to the Easement, the Grantor shall:

1. Pay to the Trust an operational cost equal to 3% of any monies owed to the Trust by the Grantor under this Termination section; and
2. Reimburse the Trust in the amount of the fair market value of the Easement as of the Easement termination date for Area A, as well as pay the appraised value of Lot 8 minus any improvement costs paid by Grantor as of the Easement termination date; or
3. Subject to the Trust's methodology and approval of the alternative mitigation site(s) by the Trust, the Grantor shall:
  - a. Enter into a conservation easement with the Trust for alternative mitigation site(s) with mitigation credits equal to those awarded because of the Easement for Area A and Lot 8; or
  - b. Enter into a conservation easement with the Trust for alternative mitigation site(s) with mitigation credits equal to those awarded because of the Easement for Area A, as well as pay the appraised value of Lot 8 minus any improvement costs paid by Grantor as of the Easement termination date; or
  - c. Transfer already available mitigation credits to the Trust equal to those granted under this Easement for Area A, and pay the appraised value

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust                      Grantor*

of Lot 8 minus any improvement costs paid by Grantor as of the Easement termination date.

**XVII. General Provisions**

- A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Alaska. Venue for any proceeding arising out of this Easement shall be in the First Judicial District at Sitka, Alaska.
- B. Liberal Construction. Notwithstanding any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the grant to affect the Purposes of this Easement and the policy and purpose of AS 34.17 *et. seq.*. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability. If any provision of this Easement, or its application, is found to be invalid, the remainder of the provisions of this Easement shall not be affected.
- D. Remedies Cumulative. No remedy or election given by any provision of this Easement shall be deemed exclusive unless so stated, but it shall, whenever possible, be cumulative with all other remedies at law or in equity.
- E. No Forfeiture. Nothing contained in this Easement will result in forfeiture or a reversion of Grantors' title in any respect.
- F. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.
- G. "Grantor" and "Trust" Defined. The terms "Grantor" and "Trust," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Trust, its personal representatives, successors and assigns.
- H. Successors and Assigns. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Properties.
- I. Termination of Rights and Obligations. A Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Properties, or if this Easement is terminated in accordance with Section XVI, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

Initials by:  
Trust                      Grantor

\_\_\_\_\_

- J. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- K. Counterparts. Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the two counterparts produced, the recorded counterpart shall be controlling.
- L. No Warranty. Trust does not and has not made any warranty as to the tax or legal effects of the granting of this Easement and has advised Grantor to seek such advice independently. Grantor is responsible for independently seeking professional advice and assumes all risk of proceeding without such advice.
- M. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in any amendment signed by the Parties to this Easement.

**XVI. Schedule of Exhibits**

- A. Legal Description of Properties Subject to Easement.
- B. Site Map(s).

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

*Initials by:*  
*Trust Grantor*

\_\_\_\_\_

TO HAVE AND TO HOLD unto Trust, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this Conservation Easement this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

CITY AND BOROUGH OF SITKA

By: \_\_\_\_\_  
James Dinley  
Municipal Administrator

State of Alaska ) [Grantor]  
First Judicial District ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_.

Notary Public in and for Alaska  
My commission expires:

The Southeast Alaska Land Trust does hereby accept the above Conservation Easement.

Dated: \_\_\_\_\_

SOUTHEAST ALASKA LAND TRUST

By: \_\_\_\_\_  
Diane E. Mayer  
Executive Director

State of Alaska ) [Trust]  
First Judicial District ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_.

Notary Public in and for Alaska  
My commission expires:

*Conservation Easement Between City and Borough of Sitka  
and Southeast Alaska Land Trust*

Initials by:  
Trust                      Grantor  
\_\_\_\_\_

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE

TERMINATION OF LEASE AND RELEASE OF INTEREST

SITK 01-111

On March 28, 1972, the United States of America entered into a lease with the City and Borough of Sitka on certain tidelands situated at Sitka, Alaska within Sitka National Historical Park, for management by the Department of the Interior, National Park Service. A copy of the lease is attached as Exhibit A of this document. The term of the lease is fifty-five (55) years beginning on March 28, 1972 and ending on March 28, 2027. The lease encumbers the following tidelands:

Beginning at Corner No. 1 of U.S. Survey No. 1258, Sitka, Alaska as Corner No. 1 and the true Point of Beginning of this description; thence S45°00'W a distance of 582.83 feet to Corner No. 2, thence N1°45'19"E a distance of 405.16 feet to Corner No. 3; thence N 72°26'E along the meander line of U.S. Survey No. 407 a distance of 39.38 feet to Corner No. 4; thence S61°26'E a distance of 153.78 feet to Corner No. 5; thence N 73°04'E a distance of 236.30 feet to Corner No. 1, the Point of Beginning of this description. The above described tract of Tidelands contains 69,943 square feet of area.

WHEREAS, Sitka National Historical Park was proclaimed a national monument on March 23, 1910, and designated a national historical park on October 18, 1972, pursuant to Public Law 92-501;

WHEREAS, the above described tidelands were included within the boundary of Sitka National Historical Park on October 18, 1972, pursuant to Public law 92-501;

WHEREAS, The Southeast Alaska Land Trust has acquired a perpetual conservation easement on the above-described property;

WHEREAS, the conservation easement contains provisions that will permanently protect the natural resources and the scenic integrity of the above-described property;

WHEREAS, it is determined that continuation of the March 28, 1972 lease is no longer necessary to protect the natural resources and the scenic integrity of the above-described property;

NOW THEREFORE, the United States of America does terminate the lease dated March 28, 1972, between the United States Department of the Interior, National Park Service and the City and Borough of Sitka, and releases its leasehold interest in the above-described property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010

United States of America

By: \_\_\_\_\_  
Charles M. Gilbert  
Chief, Land Resources Program Center  
National Park Service, Alaska Region

ACKNOWLEDGEMENT OF TERMINATION OF LEASE AND RELEASE OF INTEREST

STATE OF ALASKA )  
 ) ss.  
FIRST JUDICIAL DISTRICT )

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared \_\_\_\_\_, known to me and known to be the Chief, Land Resources Program Center, Alaska, National Park Service, and acknowledged to me that he signed the foregoing termination of lease and release of interest, and he acknowledged to me that he executed the foregoing instrument freely and voluntarily.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first written above.

\_\_\_\_\_  
Notary Public in and for the  
State of Alaska  
My commission expires: \_\_\_\_\_

Return to:  
City and Borough of Sitka  
100 Lincoln St.  
Sitka, AK 99835

Location Information for Recordation:  
Section 1, T. 56 S., R. 63 E., Copper River Meridian

THIS LEASE, made and entered into this 28th day of MARCH 1972, by and between

CITY AND BOROUGH OF SITKA (Hereinafter referred to as Lessor)

and

UNITED STATES DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE  
(hereinafter referred to as Lessee)

W I T N E S S E T H:

WHEREAS, lessor is owner of certain tidelands situated at Sitka, Alaska described as follows:

Beginning at Corner No. 1 of U.S. Survey No. 1258, Sitka, Alaska as Corner No. 1 and the true Point of Beginning of this description; thence S45°00'W a distance of 582.83 feet to Corner No. 2, thence N1°45'19"E a distance of 405.16 feet to Corner No. 3; thence N72°26'E along the meander line of U.S. Survey No. 407 a distance of 39.38 feet to Corner No. 4; thence S61°26'E a distance of 153.78 feet to Corner No. 5; thence N73°04'E a distance of 236.30 feet to Corner No. 1, the Point of Beginning of this description. The above described tract of Tidelands contains 69,943 square feet of area.

NOW, THEREFORE, for and in consideration of the agreements hereinafter contained, lessor and lessee agree as follows:

1. Lessor hereby demises and leases unto the lessee the above-described property for a term of fifty-five (55) years beginning March 28, 1972 and ending March 28, 2027.

2. The lease is for fifty-five years at no cost to the United States Department of Interior, National Park Service, under the terms of Section 1-3-28 of the Sitka General Code providing for disposition of tidelands for public purposes to other governmental units. Said lands will be used to conform to the new boundaries now proposed by Congressional legislation for the proposed Sitka National Historic Park.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. The terms and conditions herein contained shall apply to and bind the heirs, successors and assigns of the respective parties.

2. Waiver by Lessor of any agreement or condition herein shall not be considered a waiver of any subsequent breach of said agreement or condition.

TRACT 01-112' 111  
SITKA NATIONAL HISTORICAL PARK DEED NO. 11

3. If Lessee occupies the premises after expiration date of this lease, with consent of Lessor, such possession shall be construed to be a monthly tenancy at will.

4. Upon any termination of said tenancy, all improvements placed on said property and attached to the land so as to become part of the real property by common law definition shall become the property of the Lessor.

5. Lessee agrees to save Lessor harmless from any liability by reason of personal injury to any person or persons on or about the said property and premises.

6. This lease may not be assigned or sublet by the Lessee without the consent of the Lessor.

EXECUTED by the City and Borough of Sitka, Alaska, this 28th day of MARCH, 1972.

A T T E S T:

CITY AND BOROUGH OF SITKA, Lessor

Myrtle V. Flynn  
Myrtle V. Flynn, Clerk  
City and Borough of Sitka.

John E. Dapceovich  
John E. Dapceovich, Mayor.

NATIONAL PARK SERVICE, Lessee

By: Harold A. [Signature]  
its Special Agent

STATE OF ALASKA )  
 ) ss  
FIRST JUDICIAL DISTRICT )

A C K N O W L E D G E M E N T

THIS CERTIFIES that this 28th day of MARCH, 1972, there personally appeared before me, a notary public in and for the State of Alaska, JOHN E. DAPCEVICH, who there and then, in my presence, executed the above Lease and he acknowledged to me, under oath duly administered according to law, that he had the full authority as the Mayor of the City and Borough of Sitka, Alaska, so to do and that he had signed said Lease freely and voluntarily of and as his own free will and act and as the free act of said municipality and that he had thus signed said Lease for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and seal on the day and year above written.

[Signature]  
Notary Public of Alaska.

My commission expires: 1973

State of ALASKA )  
 )  
FIRST JUDICIAL District )

ss ACKNOWLEDGEMENT

This certifies that on this 24th day of MAY, 1972, a notary public in and for the State of Alaska; that the said Superintendent, Natl. Park Service in my presence there and then executed the above Lease and, under oath duly administered according to law by me, acknowledged to me that he had full authority as the Superintendent of the United States Department of the Interior, National Park Service, so to do; and that he had signed the same freely and voluntarily of and as his own free will and act and as the free act of said National Park Service and for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and seal on the day and year above written.

Notary Public for \_\_\_\_\_

My commission expires: \_\_\_\_\_

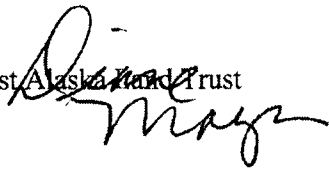


Phone: (907) 586-3100  
Fax: (907) 586-3125  
119 Seward Street, Suite 2  
Juneau, Alaska 99801  
SoutheastAlaskaLandTrust.org

September 7, 2010

To: City and Borough of Sitka Assembly

Thru: Jim Dinley, Municipal Administrator  
Michael Harmon, Public Works Director

From: Diane Mayer, Executive Director, Southeast Alaska Land Trust 

Re: Crescent Bay Mitigation Project Proposal

**Assembly Briefing and Discussion:** The City and Borough of Sitka (CBS) Assembly is requested to consider a proposed mitigation project at Crescent Bay that involves CBS accepting ownership of Lot 8 within the Sheldon Jackson Campus Subdivision and selling a conservation easement for \$248,000 on some adjoining City tidelands. The project, which would satisfy mitigation requirements for the Sitka Airport Improvement Project, also provides CBS an opportunity to “bank” mitigation credits that would offset aquatic resource impacts from some future City project(s).

**Background:**

The Southeast Alaska Land Trust (SEALTrust) is a private, not-for-profit organization whose mission is *to work with communities and willing land owners to ensure that vital natural areas remain in place for the benefit of each generation.* Under an agreement with the US Army Corps of Engineers (COE), SEALTrust serves as an “in-lieu fee sponsor” throughout the Southeast Region. This means permittees can pay SEALTrust a “fee in-lieu of mitigation” to compensate for unavoidable impacts to wetlands or aquatic sites that result from their development projects.

When accepting these “in-lieu fees,” SEALTrust also accept the “mitigation debt” identified in that COE permit. We use the “in-lieu fees” to fund the acquisition of conservation agreements or fee simple title on wetlands and aquatic sites that have important habitat functions. SEAL Trust has on numerous occasions provided our mitigation services to the Alaska Department of Transportation and Public Facilities (DOT) and have offered to do so for the Sitka Airport Improvement Project (Airport Project.)

As part of the Environmental Impact Statement for the Airport Project, DOT examined various mitigation actions to determine how to offset the aquatic impacts. Conservation of Lot 8 in the Sheldon Jackson Campus Subdivision (Plat 2009-8, Sitka Recording District) gained favor among State and federal project reviewers because it would provide riparian protections to the adjacent intertidal lands that support a high-functioning eelgrass bed and other aquatic resource values. Conservation of the Lot 8 uplands would limit development of these adjacent tidelands, would provide a *coastal* site to offset some of the impacts to *coastal* aquatic resources at the Sitka airport, and would provide coastal access for the general public and educational opportunities. The scenic vistas and Lot 8 location at the gateway to the Sitka Historic National Park do not score as mitigation credits, but are obvious, additional benefits.

During the Airport Project permit process, some agency reviewers challenged the EIS assumptions about the “mitigation credits” assigned to the conservation of Lot 8 and the adjacent high-valued City tidelands. The FAA, DOT and SEALTrust, with support from National Marine Fisheries Service, National Park Service, CBS, and Sheldon Jackson, developed additional information on the functional habitat value of the these tidelands and options to insure their protection. This effort has quantified the benefits of the mitigation project and has kept the Airport project on schedule.

**Mitigation Site Map and Ownership:**

(Refer to Figure 3: Habitats Present on Tidelands adjacent to Sheldon Jackson Property)  
The mitigation site map (Figure 3) identifies three areas:

- Area A: .65-acre SJ Lot 8 plus 5.18-acre City tidelands;
- Area B: 1.71-acre City tidelands currently under lease to NPS;
- Area C: 2.35-acre State tidelands

The proposed mitigation for the Airport Project covers Area A. The mitigation action would include the purchase of the 0.65-acre Sheldon Jackson Lot 8 shoreline property by SEALTrust, using in-lieu fees. Lot 8 would be donated to the CBS subject to a development restrictions that would insure public access and allow for Sitka's Sea Walk development. As part of the Airport Project mitigation, SEALTrust would also purchase a conservation easement on the 5.18 acres of CBS-owned tidelands within Area A. This easement has been appraised at \$248,000. This conservation easement would prohibit any tidelands development within Area A. The proposed Area A mitigation project satisfies the mitigation debt from the Airport Project and will leave a slight credit (0.59 habitat functional acre) on the “mitigation ledger” for DOT.

Area B contains CBS tidelands leased by the National Park Service through 2027. The NPS has unrestricted use of this intertidal land in a “no-cost” lease from the CBS. As part of this overall conservation effort the NPS is willing to relinquish this lease on the condition that the conservation easement for Area A is expanded to also include Area B. If it chooses to include Area B in this mitigation project, the CBS would be able to “bank” the mitigation credit (1.71 acres) of Area B for use to offset aquatic impact in some future development projects.

Area C encompasses State-owned tidelands covered by a significant expanse of eelgrass. While current State policy does not support conservation easements on State land, a conservation easement on Areas A and B, adjacent to the NPS ownership to the South, effectively surrounds Area C thereby protecting this habitat from future site development. SEALTrust will seek mitigation credit for Area C as part of this mitigation project. Those credits, if approved by the COE, would also be available for future CBS development projects.

**Summary:**

The mitigation project "formula" for CBS is:

1. CBS would get full market value for a conservation agreement on the tidelands of Area A;
2. CBS gets Lot 8 with restricted use for the Sea Walk;
3. CBS gets additional mitigation credits on the ledger from Area B (credits for Area C are yet to be determined.)

I look forward to discussing this important mitigation project with you. Thank you for your consideration.

**VII. REPORTS****a. Deputy Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other**

*Acting Administrator Michael Harmon reported the Sitka Police Department was offering assistance to Hoonah. He also mentioned the roundabout work that was done by Department of Transportation and reviewed the status of several Public Works projects.*

*Municipal Clerk Ingman reminded the public absentee voting for the October 5 Municipal Election would begin on Monday, September 20.*

**VIII. CONSENT AGENDA**

**A 10-153** Approve the minutes of the August 20, 24 and 31 Assembly meetings.

**This matter was APPROVED ON THE CONSENT AGENDA**

**B 10-154** Appoint Pat Eliason to an unexpired term on the Sitka Historic Preservation Commission.

**This matter was APPROVED ON THE CONSENT AGENDA**

**C 10-151** Approve acceptance of FEMA Fire Prevention and Safety Grant.

**This matter was APPROVED ON THE CONSENT AGENDA**

**IX. UNFINISHED BUSINESS:**

**D ORD 10-25** Amending Sitka General Code at Title 8, Chapter 4, entitled "Animal Protection and Control," regarding fees and fines.

**A motion was made by McConnell that this Ordinance be APPROVED. The motion PASSED by the following vote:**

**Yes:** 4 - Ozment, Westover, Crews, and McConnell

**X. NEW BUSINESS:**

**E 10-148** Discussion/Direction on Crescent Bay Mitigation Project involving accepting ownership of Lot 8 SJCC Subdivision, selling a conservation easement on some adjoining tidelands and directing the Attorney to prepare an ordinance.

*Southeast Alaska Land Trust Executive Director, Diane Mayer gave an overview of the proposed Crescent Harbor Mitigation Project.*

*Linda Speerstra, representing the Army Corp of Engineers, advised she had worked on this for the last 18 months. All impacted agencies are supportive.*

*Harmon did not have a specific dollar amount regarding the lease with the National Park Service but added the City would receive mitigation credits to bank towards a*

*future project. Harmon clarified CBS would get full market value for the tidelands of \$248,000, and Lot A would be turned over to City. The value of wetland delineation where there is an opportunity for bank credits saves the City a substantial amount of money.*

**A motion was made by Westover that this Item be APPROVED. The motion PASSED by the following vote:**

**Yes:** 4 - Ozment, Westover, Crews, and McConnell

**F 10-156**

Board of Adjustment - Approve a Conditional Use Permit with conditions submitted by City and Borough of Sitka for a rock quarry at Sawmill Cove Industrial Park site.

*Several pieces of late correspondence were received that staff did not have sufficient time to review prior to the meeting.*

**This matter was PULLED PRIOR TO THE MEETING.**

**G 10-152**

Authorize award to Gilbert Gilkes & Gordon Ltd. for Contract No. 1 Supply of Turbine Generator Equipment for the Blue Lake Expansion Project and obligate project funds.

*Westover thanked Electric Department employees, Dean Orbison and Robert Dryden, for their work.*

**Motion by Westover to award a contract to Gilbert Gilkes and Gordon Ltd. For Contract No. 1 to supply turbine generator equipment for the Blue Lake Expansion project in the amount of \$12,014,297 and authorize a 10% contingency of \$1,201,430 from Capital Project No 90594 for said project.**

**Yes:** 4 - Ozment, Westover, Crews, and McConnell

**H 10-155**

Approve an award to Paleo Logics, for archeological analysis and surveys related to Takatz Lake Hydroelectric Project.

*Dean Orbison explained this is a requirement.*

**A motion was made by Westover that this Contract/Agreement be APPROVED. The motion PASSED by the following vote:**

**Yes:** 4 - Ozment, Westover, Crews, and McConnell

**I 10-150**

Approve a contract with Chatham Electric Inc. to supplement the Electric Department line crew for distribution and transmission projects.

*Electric Department employee, Robert Dryden, explained there is only one licensed contractor in Southeast. The rates are standard and added CBS will not be charged a mobilization fee. Dryden noted CBS has a great line crew, but there is difficulty in working construction projects into daily operations.*

**A motion was made by McConnell that this Contract/Agreement be APPROVED. The motion PASSED by the following vote:**

**Yes:** 4 - Ozment, Westover, Crews, and McConnell

**J 10-157**

Award a sole-source contract to Aggregate Constructors, Inc. to Grind and Repave Wortman Loop Road.

**A motion was made by Westover that this Contract/Agreement be APPROVED. The motion PASSED by the following vote:**