



# Memorandum

September 2, 2016

To: Mark Gorman, Municipal Administrator  
From: Bryan Bertacchi, Utility Director  
Subject: **Transfer of CBS Boomer Property to USDA Forest Service (FS) for incorporation into the West Chichagof-Yakobi Wilderness Area in order to fulfill mitigation requirements for unavoidable impacts of the Blue Lake Project Expansion**

## **Executive Summary:**

On May 24<sup>th</sup>, 2011 the Assembly authorized the Utility Director to negotiate mitigation measures that were required as part of the FERC License under the Blue Lake Expansion Project. This authorization included the potential transfer of municipal lands. Subsequent to this approval, the Final Mitigation Plan for Blue Lake Project Expansion filed with FERC on October 11, 2012 included the donation of the CBS Boomer Property (U.S. Mineral Survey 1453& 1587). Thus, the donation of this CBS Boomer property became a requirement under the Blue Lake Expansion Permit. The attached Ordinance will authorize the transfer of this Property and complete the CBS obligation under this FERC license requirement as well as the Conditions of the Department of Army Permit.

A failure to complete this action, would likely result in a costly re-opening of the FERC permit and alternative mitigation measures would need to be approved by the parties.

## **Background:**

Completion of Blue Lake Project Expansion resulted in unavoidable impacts to lands within the Project Area including inundation of 362 acres of National Forest Lands and loss of 0.055 acres of waters of the United States. Pursuant to the project license amendment that approved Blue Lake Project Expansion, CBS was required to negotiate measures to mitigate unavoidable impacts from Project construction with the FS and stakeholders.

In 2010 and 2011 preliminary mitigation meetings were held with the FS and other project stakeholders including the Sitka Tribe of Alaska, Sitka Conservation Society, the Army Corps of Engineers, the Alaska Department of Fish and Game, US Fish and Wildlife Service, National Marine Fisheries Service, and the Alaska Department of Natural Resources. During preliminary mitigation meetings the transfer of CBS Boomer Property to the Forest Service for incorporation into the West Chichagof-Yakobi Wilderness area was identified as a preferred alternative.

On May 24, 2011 the Assembly authorized the Utility Director to negotiate mitigation measures for the Blue Lake Project based on Assembly direction, including the potential transfer of municipal lands. A Final Mitigation Plan was filed by CBS with the Federal Energy Regulatory Commission (FERC) on October 11, 2012 and approved on October 17, 2013. In the Final Mitigation Plan the CBS agreed in principle to donate the Boomer Property, plus certain actions related to improving the area. These actions included:

- 1) *Remove any hazardous material concerns identified during the Phase 1 conducted by the FS.*  
No hazardous material concerns were identified.

- 2) *Cleanup the equipment and buildings left at the exploration site and restore the land to a condition suitable for regrowth of native vegetation.* The FS completed the lengthy process of getting approval for temporary access to the Property across a Wilderness Area for the purpose of cleanup and restoration. The Assembly authorized a contract with Troy's excavation to complete cleanup and restoration of the Property. Sitka Conservation Society provided volunteers to complete the handwork under the direction of the FS. The work was completed in 2015.
- 3) *Quantitatively inventory the properties for wetlands and conduct wetland delineation of the Property.*  
Completed in November 2014.

Additionally, the Property was appraised in 2011 and then assessed in 2016 to verify that the value of Property is less than \$500,000. In both cases, the value of the Property was well below the \$500,000 threshold.

The improvements outlined in the Final Mitigation Plan have been completed. Staff now requests Assembly authorization to transfer the Boomer Property to the FS in order to meet the conditions of the Blue Lake FERC license as well as the conditions of the Department of the Army Permit.

**Community Impacts:**

Transfer of the Boomer property is a reasonable and cost effective measure to compensate for the impacts resulting from Blue Lake Expansion. The 48 acre Boomer property is surrounded by Congressionally designated Wilderness and the 362 acres of inundated land adjacent to Blue Lake is within an Inventoried Roadless Area; therefore the land management is similar. Hydroelectric Project license mitigation plans are often lengthy and litigious. The Sitka mitigation negotiations and implementation have been an exceptional example of licensee, agency and stakeholder cooperation. Assembly authorization of this transfer will be a large step to completing CBS mitigation obligations.

**Attachments:**

- A. Memos presented to the Assembly related to Boomer from<sup>1</sup>:
  - March 31, 2015
  - October 22, 2014
  - June 21, 2011
  - May 20, 2011
- B. Boomer Survey
- C. Final Mitigation Plan, Blue Lake Expansion Project (excerpt, 3 pages)
- D. FERC Order dated October 17, 2013
- E. Department of the Army Permit POA-2012-0441

Cc:

Jay Sweeney, Chief Finance and Administrative Officer  
Brian Hanson, Interim Municipal Attorney  
Maegan Bosak, Planning and Community Development Director

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<sup>1</sup> Please note that packets from these meetings were not included in their entirety for brevity as documentation related to Boomer is extensive, however supporting documents from each meeting are available online.

# Attachment A



# Memorandum

May 20, 2011

To: Jim Dinley, Municipal Administrator  
From: Christopher Brewton, Utility Director, Electric Department *CB*  
Subject: **Blue Lake License Amendment – Protection, Mitigation & Enhancement (PM&E) Terms and Conditions**

**Request:**

This is to request Assembly approval to authorize the transfer of City & Borough of Sitka property in the negotiations of Blue Lake License Amendment PM&E terms and conditions between CBS and Federal/State Resource agencies for the Blue Lake Hydroelectric Expansion Project.

**Background:**

On November 23, 2010, the CBS filed the Final Application for License Amendment and Draft Environmental Assessment (EA) to the Federal Energy Regulatory Commission (FERC) for the Project. FERC requested additional information which was filed with FERC on March 10 and April 6, 2011, which specifically required PM&E measures to be developed in consultation with federal and state resource agencies. (Attachment A) FERC subsequently accepted the license application and provided formal notice on April 8, 2011 soliciting comments, motions to intervene, protests, recommendations, terms and conditions, and fishway prescriptions. (Attachment B) With this formal notification, interested parties had 60 days (June 7, 2011) to file comments.

PM&E meetings were held with stakeholders on June 2, 2010, November 5, 2010, and May 19, 2011. (Attachment C) The June and November meetings were conducted to fully explain the Project details and solicit comments from stakeholders relative to potential PM&E measures that may be required. Subsequent to these meetings draft PM&E measures were submitted by USFS, Sitka Conservation Society (SCS) and Sitka Tribe of Alaska (STA). (Attachment D)

The May 19, 2011 meeting began the process of negotiating mitigation conditions for the Blue Lake Project Expansion. This is the final phase of receiving authorization from FERC to begin construction; it's a requirement under federal law that we do this.

**Purpose:**

Our negotiations with the USFS are particularly critical because terms and conditions from that agency are mandatory, that is, FERC must issue them as non-negotiable conditions to the amended FERC license. Therefore, we'd like to negotiate a favorable mitigation package before the terms and conditions become final. The terms and conditions the USFS submits by June 7, 2011 will be final conditions.

During preliminary negotiations with the USFS, we have reviewed their proposals and found one, a land transfer involving the CBS owned Chichagof property, which appears to be favorable to both the City and USFS. The action would involve the City transferring approximately 48 acres of land on Chichagof Island currently owned by the City to compensate for impacts related

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Blue Lake PM&E  
May 20, 2011

to inundation of 362 acres of land around Blue Lake after the dam is raised. Because the land on Chichagof Island is in a designated Wilderness Area, and the inundated area is an Inventoried Roadless Area, and is required for the Blue Lake Expansion Project, this action appears to be a reasonable concession.

To go forward with negotiations, we're asking the Assembly to consider approval of this land transfer. We believe that approval of this transfer would promote favorable progress on other mitigation measures still under discussion.

**Recommended Motion:**

I MOVE to authorize the Municipal Administrator to execute a land transfer of City owned property as part of PM&E measures for the Blue Lake Hydroelectric Expansion Project.

Cc: Jay Sweeney, Interim Finance Director  
Theresa Hillhouse, Municipal Attorney  
Wells Williams, Planning Director  
Marlene Campbell, Gov. Relations Director

*This item was pulled from the agenda prior to the meeting.*

- I      [ORD 11-20](#)      Adopting Budgets for the Fiscal Year July 1, 2011 through June 30, 2012.

*Christianson stated the budget process this year was strained. Hackett encouraged a worksession format versus special meetings in the future.*

*Acting Finance Director Jay Sweeney urged the Assembly to consider multiple year budgeting.*

*Hackett would like to see a permanent sinking fund for infrastructure maintenance. Sweeney indicated earnings of the working capital could be used or leave the existing working capital as is, and increase revenues; either way the earnings would fund maintenance.*

**A motion was made by McConnell that this Ordinance be PASSED ON FIRST READING. The motion PASSED by the following vote.**

**Yes:** 7 - Westover, Crews, McConnell, Hackett, Blake, Christianson, and Esquiro

#### **Additional New Business Items**

- J      [11-110](#)      Authorize the Police Department to apply for a COPS grant.

*Chief Schmitt explained these grants had recently been reconfigured. Administrator Dinley mentioned typically the Police Department has a police officer vacancy, and predicts they will have a funded vacancy to cover the fourth year requirement of the Cop Grant when the time comes.*

**A motion was made by Christianson that this Grant be APPROVED. The motion PASSED by the following vote.**

**Yes:** 7 - Westover, Crews, McConnell, Hackett, Blake, Christianson, and Esquiro

- K      [11-113](#)      Negotiate a land transfer and/or municipal projects as part of the PM&E measures for the Blue Lake Hydroelectric Project.

*Utility Director, Chris Brewton, advised no fisheries impacts are foreseen; however there would be impacts relative to loss of land, recreation, and wetlands etc. The strategy would be to focus on environmental protection. The most important requirement would be to protect the drinking water.*

*Brewton reviewed some of the projects on the table. The existing FERC license has 12 mandatory conditions. Other than that, the City would need to decide what is a fair trade.*

*A discussion ensued regarding the possible trade of city owned acreage on Chichagof. Municipal Attorney, Theresa Hillhouse, pointed out that the city can only transfer property by ordinance. Government Relations Coordinator, Marlene Campbell, recalled the Chichagof property has a significant amount of gold and silver deposits. It is an area of great mining potential. On the other hand, it is surrounded by National Wilderness, which would severely constrain mining operations.*

*Christianson mentioned if the "deal is not sweet enough" he doubts there would be four votes. Crews didn't agree with tying all these projects to it. He would like to walk away from the entire deal and not be supportive of any of them. Both Christianson*



# Memorandum

June 21, 2011

To: Jim Dinley, Municipal Administrator  
From: Christopher Brewton, Utility Director  
Subject: **Blue Lake License Amendment – Protection, Mitigation & Enhancement (PM&E) Terms and Conditions – Status Update**

Please included the following package in the reports section of the scheduled June 28, 2011 regular Assembly Meeting. I will be in attendance to answer questions.

In response to the April 8, 2011 Federal Energy Regulatory Commission (FERC) Notice of Application and Solicitation of Comments, the U.S. Forest Service (USFS) has filed final terms, conditions, and summary of management direction pursuant to Section 4(e) of the Federal Power Act. These terms and conditions are included as Attachment 1 and Attachment 2.

Attachment 1 is considered “boilerplate” conditions typically seen for all hydroelectric projects on USFS lands. Attachment 2 is potential project-specific mitigation measures under consideration for the inundation of an additional 362 acres of the Blue Lake watershed.

Because of requirements relative to the sale and/or disposal of City-owned property that is being considered for mitigation purposes, a contract has been awarded for a property appraisal of the West Chichagof-Yakobi Wilderness property. As noted in Sitka General Code 18.12.010, property valued greater than \$500,000 must be approved by ordinance ratified by a majority of the qualified voters.

Cc: Jay Sweeney, Interim Finance Director  
Theresa Hillhouse, Municipal Attorney  
Wells Williams, Planning Director  
Marlene Campbell, Gov. Relations Director

*extended a thank you to Public Works Director, Michael Harmon, and City staff for their involvement in installing the score board at Moller Field.*

*Sitka Sound Science Center Director, Lisa Busch, provided an update on activities at the Center.*

## VII. REPORTS

### 11-133

Blue Lake License Amendment - Protection, Mitigation & Enhancement Terms & Conditions

*Utility Director, Chris Brewton, spoke to the Blue Lake License Amendment, specifically the protection, mitigation and enhancement terms and conditions. Brewton noted access would be limited to Blue Lake Road during construction.*

## VIII. CONSENT AGENDA

### A 11-126

Approve the minutes of the June 14, 2011 Assembly meeting.

**This item was APPROVED ON THE CONSENT AGENDA.**

### B 11-127

Appointments: 1) Reappoint Jane E. Eidler - Library Board, 2) Myron Fribush, MD - Local Emergency Planning Commission, 3) Thomas R. Brown - Sitka Community Hospital Board, 4) Senator Bert Stedman, Investment Committee, and appoint 5) Ann Wilkinson to a term on the Sitka Community Hospital Board, and 6) Darrell Windsor to a term on the Planning Commission.

**This item was APPROVED ON THE CONSENT AGENDA.**

### C ORD 11-30

Adjusting the FY 2011 Budget for changes identified during the Third Quarter FY 2011 Formal Budget Execution Review.

**This item was APPROVED ON THE CONSENT AGENDA.**

### D 11-131

Authorize the Administrator to execute a Material Sale Agreement with Southeast Earthmovers from July 13, 2011 to August 1, 2016 with a royalty rate of \$1.55 per cubic yard in place.

**This item was APPROVED ON THE CONSENT AGENDA.**

### E 11-125

Awards Takatz Lake: A) Area 1 Botanical Resource Studies to HDR Alaska, Inc.- not to exceed \$85,000; and B) Area 2 Botanical Resource Studies to Bethel Environmental Solutions LLC - not to exceed \$75,000.

**This item was APPROVED ON THE CONSENT AGENDA.**

### F 11-129

Approve proceeding with the purchase of a new fire truck previously approved in the FY 2012 Budget - July 1, 2012.

**This item was APPROVED ON THE CONSENT AGENDA.**

### G 11-132

Approve award of the Professional Services Contract for Pacific High School Remodel to McCool Carlson and Green on a Time and Expense basis, total contract not to exceed \$220,215.00 - This expenditure was approved by Sitka voters at the October 5, 2010 election, using proceeds from seasonal sales tax revenue to fund Pacific High School Major Maintenance.





## Memorandum

October 22, 2014

To: Mark Gorman, Municipal Administrator  
From: Christopher Brewton, Utility Director  
Subject: **Blue Lake License Amendment – Protection, Mitigation & Enhancement (PM&E) Terms and Conditions – Status Update**

Please include this memorandum in the reports section of the scheduled October 28, 2014 regular Assembly Meeting in regards to mitigation measures for the Blue Lake Expansion Project.

Pursuant to Section 4(e) of the Federal Power Act, the U.S. Forest Service (USFS) filed final terms and conditions relative to the PM&E measures required for the inundation of an additional 362 acres of the Blue Lake watershed. The Assembly was provided information on these proposed measures at the May 24, 2011 and June 28, 2011 meetings.

In summary, the proposed mitigation measures and current status include:

- Funding for Redoubt Lake Fertilization in the amount of \$10,000/year for 10 years
  - Collection Agreement with USFS signed on February 28, 2013 & expires December 31, 2022 – will be funded from Electric Department annual Operations Budget
- Funding in the amount of \$10,000/year for a Campground Host at the USFS Campground on the Blue Lake Road
  - Will be included in final PM&E document at conclusion of Blue Lake Construction – will be funded from Electric Department annual Operations Budget
- Establishment of a \$50,000 Mitigation Escrow Fund for post construction impacts that may arise
  - Budget item is included in the Blue Lake construction budget under License Amendment – monitoring will continue for 3-years after the lake reaches full pool
- Donation of two City-owned parcels within the West Chichagof-Yakobi Wilderness to the USFS
  - Initial property appraisal completed on September 30, 2011 to determine if value of property exceeds \$500,000 which would trigger a public vote for transfer – assessed value was well below this threshold
  - Wetlands Delineation field work was completed September 2014 – draft report due October 2014 with final report by end of year – this is a potentially positive outcome for the City as these wetlands may count towards the City's Wetlands Mitigation Bank

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- Contractor visited site on September 26, 2014 to evaluate site for removing existing solid waste prior to lands transfer – City must develop a plan for removal and submit to USFS for approval – material will be moved across small section of Wilderness Area and authorization must be obtained prior to removal – draft plan will be submitted November/December 2014 & with USFS approval, materials will be removed Spring 2015

I would like to express my appreciation to the USFS Staff who have worked very closely with the City to develop mitigation measures that are reasonable, thoughtful, and will provide positive benefits to the environment and our community. In many cases, decisions on mitigation are expensive, protracted, and litigious. I have complete confidence the mutual respect and collaboration to complete these measures will continue to fruition.

Cc: Jay Sweeney, Chief Finance & Administrative Officer  
Robin Koutchak, Municipal Attorney  
Wells Williams, Planning Director  
Marlene Campbell, Gov. Relations Director



# CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS  
330 Harbor Drive  
Sitka, AK  
(907)747-1811

## Meeting Agenda City and Borough Assembly

*Mayor Mim McConnell  
Deputy Mayor Matt Hunter  
Vice-Deputy Mayor Phyllis Hackett, Steven Eisenbeisz,  
Benjamin Miyasato, Aaron Swanson, and Tristan J. Guevin*

*Municipal Administrator: Mark Gorman  
Municipal Attorney: Robin L. Koutchak  
Municipal Clerk: Colleen Ingman, MMC*

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Tuesday, October 28, 2014

6:00 PM

Assembly Chambers

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### REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

[14-214](#) Reminders and Correspondence

**Attachments:** [Reminders and Calendars](#)

[Blue Lake License Amendment](#)

[NWPPA Communications Award](#)

[Solar Turbines](#)

[SE Transportation Plan Comment](#)

V. CEREMONIAL MATTERS

[14-207](#) Certificate for Wells Williams

**Attachments:** [Ceremonial Williams](#)

VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Sitka Community Hospital, Municipal Departments, School District, Students and Guests (time limits apply)



# Memorandum

March 31, 2015

To: Mark Gorman, Municipal Administrator  
From: Christopher Brewton, Utility Director  
Subject: **Award of Contract – Boomer<sup>1</sup> Property Solid Waste Disposal**

**Request:**

I request Assembly approval authorizing the Municipal Administrator to issue Troy's Excavation a Purchase Order in the amount of \$72,100 for completion of the Boomer Property Solid Waste Disposal. I further request a contingency of \$7,500 for disposal costs of the scrap materials. Total cost, including contingency, is \$77,600.00.

**Background:**

As noted in the Assembly meeting of May 24, 2011, the Assembly authorized the potential transfer of CBS owned property as part of the Prevention, Mitigation, and Enhancement (PM&E) measures for the Blue Lake Hydroelectric Expansion Project (Project). PM&E measures are required as the Project inundated an additional 362 acres of National Forest System (NFS) land.

**Analysis:**

During negotiations with the Forest Service and stakeholders, the transfer of CBS owned property in the West Chichagof area (Boomer) was identified as a preferred alternative. This is a reasonable and cost effective proposal to compensate for impacts related to Blue Lake inundation. The Boomer property is surrounded by Congressionally designated Wilderness and the inundated land at Blue Lake is within an Inventoried Roadless Area; therefore the land management is similar.

However, prior to any consideration of a property transfer the land in question must meet certain environmental conditions including the assessment and remediation of any potential environmental hazards. The Forest Service completed a Phase I Environmental Site Assessment dated September 21, 2012, with the following conclusions:

1. No recognized environmental conditions were identified in connection with the property.
2. Prior to property transfer, the solid waste on site must be removed.

The purpose of this contract is to remove the solid waste identified in the environmental assessment. Attachment (A) provides photographs of the materials in question; Attachment (B) identifies the scope of work required.

**Fiscal Note:**

Sufficient funds are available in the Blue Lake Hydroelectric Expansion Project, CIP No. 90594 to complete this work.

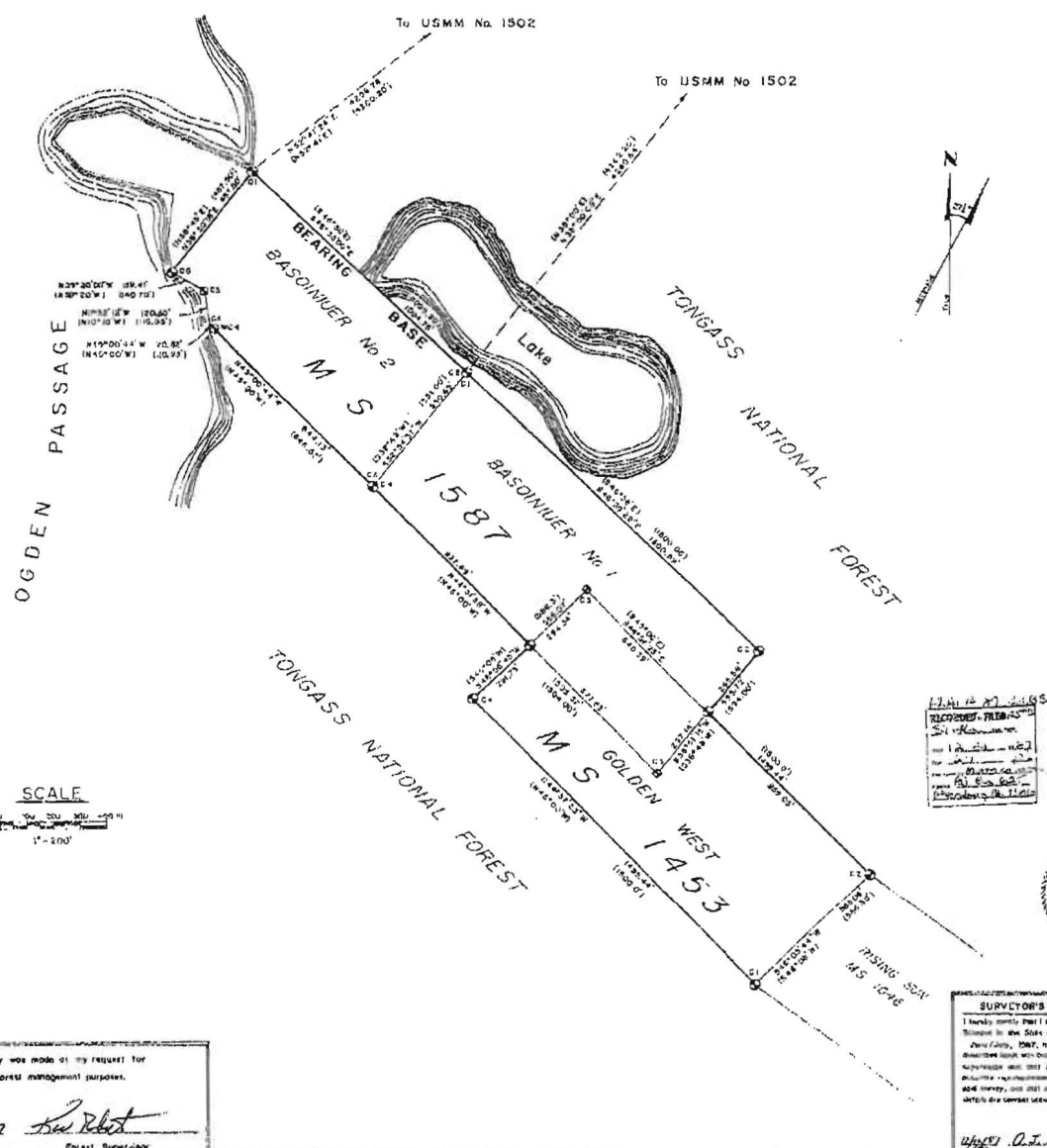
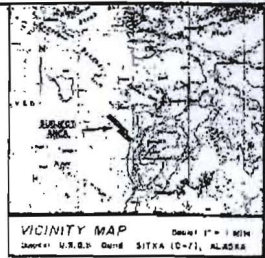
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<sup>1</sup> U.S. Mineral Survey 1453 & 1587

- B**     [15-043](#)            Reappoint Hans von Rekowski to a term on the Parks and Recreation Committee.
- Miyasato thanked Hans von Rekowski for his many years of service on the Committee.
- A motion was made by Miyasato to APPROVE this appointment. The motion PASSED by the following vote.**
- C**     [15-044](#)            Approve liquor license renewal for Van Winkle and Sons
- This item was APPROVED on the Consent Agenda.**
- D**     [15-041](#)            Approve reappropriating all unspent harbor bond proceeds to the Sitka Transient Float Project - \$197,662.64 + accrued interest
- Putz applauded staff for their work on the ANB Harbor project.
- Eisenbeisz reminded the Assembly of the options associated with this request and encouraged the Assembly to explore other options.
- Jay Sweeney, Chief Finance and Administrative Officer, stated there was the possibility of bonding in the future for Crescent Harbor. Sweeney said the money in question could be used for debt service, however, the amount of money available to put toward municipal contributions down the road would require more of the fund balance to be spent.
- A motion was made by Putz that this item be APPROVED. The motion PASSED by the following vote.**
- Yes:** 5 - Hunter, Swanson, Miyasato, Guevin, and Putz
- No:** 1 - Eisenbeisz
- Absent:** 1 - McConnell
- E**     [15-039](#)            Award issuing Troy's Excavation a contract/purchase order, plus contingency for Boomer Property Solid Waste Disposal - \$77,600.00
- Mitch McGraw stated his displeasure at the steps involved in awarding the contract.
- Deputy Mayor Hunter asked Municipal Administrator Gorman to provide clarification of the process for sole source procurement. Chris Brewton, Utility Director, came forward to provide further explanation of the process, the USFS permitting process, and timeline to date.
- Municipal Attorney, Robin Koutchak, offered that one of the reasons for the interagency exception exists because the process was often arduous when governmental agencies were dealing with one another.
- Eisenbeisz asked Hal Spackman of the Sitka Historical Society if the Society would be interested in artifacts to which Spackman replied yes.
- A motion was made by Putz that this item be APPROVED. The motion PASSED by the following vote.**
- Yes:** 5 - Hunter, Miyasato, Eisenbeisz, Guevin, and Putz

## Attachment B





**SURVEY METHOD & HISTORY**

The original survey of Mineral Survey No. 1453 and Mineral Survey No. 1587 was conducted in August, 1921 and August, 1922, respectively by the U. S. Department of the Interior, Public Survey Office.

This survey of MS 1453 and MS 1587 was conducted in June and July of 1987. The survey was performed using a Trimble Model 1000 Total Station (TS1000) with the instrument at constant temperature to the best of a mile. All measurements, unless otherwise specified, were made with a tape electronic optical distance meter, model 1471 (SFA1000), with an accuracy of 4.02 mm + 1.11 millimeters per foot horizontal distance. The survey methods are set forth in the regulations found in the Manual of Surveying, July 1987, U.S. Department of the Interior, Bureau of Land Management. The error of closure for this survey was 1:11,000.

The BEARING DATA for MS 1453 and MS 1587 was determined from the original survey bearing between C2 and C2 of Survey No. 2, MS 1587.

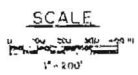
**SURVEY LOCATION:** MS 1587 and MS 1453 are located in Section 28 of T48S, R47E, C4M.

**OWNERS:** MS 1587 - City of Sitka  
MS 1453 - City of Sitka

**LEGEND**

- Forest Service Monument (Set)
- ⊙ Original Monument (Found, not plotted)
- USFS Boundary Line (Closed, Dashed, Faint, & Paired With USFS Property Boundary Slope)
- Property Line
- Tie Line

M33°10'00"E 1500.00' Measured Bearing & Distance  
M33°08'00"E 1500.32' Measured Bearing & Distance



ALL DATA PLUGS  
REMOVED FROM  
SITKALAND  
BY  
MURPH ENGINEERING  
DATE 10/14/87



The survey was made at my request for National Forest management purposes.

10/14/87 *Bruce Robert*  
date Forest Supervisor

**SURVEYOR'S CERTIFICATE**

I hereby certify that I and a registered Surveyor, licensed in the State of Alaska, and that in June 1987, I and a registered Surveyor, licensed in the State of Alaska, have surveyed the above described land with due diligence and my best judgment and that this is a true and accurate representation of the land as surveyed and that all documents and other data in the correct recording in said State were

*Walter A. J. Murphy*

SHEET 1 OF 2

**BOUNDARY LINE RETRACEMENT**

MS 1587 & MS 1453

FOR THE FOREST SERVICE  
BY  
**MURPH ENGINEERING**  
Box 625  
Petersburg, Alaska 99833

DATE OF SURVEY 12/15/87  
NOW 1987  
SCALE 1" = 200'  
DRAWN BY LAW  
DATE CONTRACT NO. 28-2847-0011



# Attachment C

lose habitat in others, and would have a similar amount in the remainder, resulting in no net change among all areas) or by the reduced rate of reservoir fluctuation relative to the existing condition. Therefore, no avoidance, mitigation or compensation is proposed for fish.

### **2.2.2 Resources with Impacts Addressed by Avoidance Measures**

**Wildlife.** One of the Project's significant impacts would be increased access to Blue Lake if increased boat access from raised water level were not restricted. To avoid this occurrence, the City plans to restrict access to blue lake, particularly for the purpose of launching a boat. This restriction would be achieved by emplacement of a gate, near the current parking lot, past which no vehicles may pass. No specific mitigation measures are proposed at this time because the City believes that the access restriction will avoid wildlife impacts

**Water Quality.** Similar to increased access-related impacts to wildlife, it is expected that water quality might be affected by facilitating easier boat launching and consequent recreation usership. Restrictions in the City's Watershed Control Plan prohibit increased usership, beyond current levels, on Blue Lake because the lake is the City's drinking water supply. Therefore, without access restrictions, lake use could increase violating Control Plan conditions and possibly impacting drinking water quality.

As with the plan for wildlife resources, the City believes that restricting access, using the gate, will sufficiently impede access to avoid water quality impacts.

### **2.2.3 Resources with Impacts Addressed by Mitigation**

#### **Inundation of 362 acres of National Forest System land around the Blue Lake Creek valley and other areas of the lakeshore.**

##### **Description of Impacts**

The most significant unavoidable impact would be permanent loss of the timber, recreation, subsistence, wildlife habitat, and botanical resources around the lake due to raised water levels. All of these land areas are currently within the National Forest System and are under ownership of and management by USFS. (Certain potentially-affected botanical resources, specifically meadow and mudflat vegetative types, are the subject of FERC Article 406).

Also included in discussions of the 362 acre inundation were wetlands which would be inundated. A quantitative functional analysis of impacts to wetlands and Waters of the U.S. was performed in consultation with the US Army Corps of Engineers and other Stakeholders.

Also included in discussions of the 362 acre inundation are the loss of 15.2 acres of wetlands, and 32.7 acres of stream channels (approximately 20,129 linear feet). A

quantitative functional analysis of impacts to wetlands and Waters of the U.S. was performed by DOWL HKM dated November 2011. The Corps provided an approved jurisdictional determination of the inundation area on July 5, 2012.

### **City-Proposed Mitigation**

The City proposes to donate 48 acres of land on Chichagof Island as mitigation for the inundated area. The lands in question, in three parcels known as “Basoiniuer No. 1, Basoiniuer No. 2, and Golden West” on City planning documents, are currently municipal owned lands within the West Chichagof-Yakobi Wilderness Area managed by the USFS Sitka Ranger District. These lands are depicted in Plat 87-32BS, Boundary Line Retracement of MS 1587 and MS 1453 recorded at the Sitka Recording District on December 21, 1987 and will be referred to as the “Boomer lands” in this document. The property will be incorporated in the Wilderness area within 5 years of the time of donation.

Mining claims for these properties were staked; MS 1453 (Golden West) was patented as Patent 941732 in 1924 and patent 1087814 was issued to Joseph T. Baur and John Soini in 1936 at which time the property was located in the Sitka mining district. Sitka records indicate that the properties were on the delinquent tax roll and foreclosure list for the tax year 1968. In 1971, as Statutory Warranty Deed was issued to the Borough by the Superior Court of the State of Alaska.

In 1984, the City and Borough of Sitka leased the property to Boomer Exploration Inc. Boomer Inc. prospected the property but filed no mineral report. The Boomer prospecting camp was abandoned and the City removed potential hazardous material from the site in the late 1990s. The deteriorated camp and prospecting equipment remain to this day.

The non-Wilderness designation of the Boomer property is not consistent with that in the surrounding West Chichagof-Yacobi Wilderness area. It has been suggested by the USFS that the most appropriate use of the property would be to include it in the Wilderness area after certain rehabilitation measures have been performed.

The City has in principle agreed to this donation, plus certain actions related to improving the area. The actions currently under discussion are:

- 1) Donate in fee all ownership rights to the Boomer lands by Warranty Deed to the United States of America and its assigns. The acquiring agency of the United States is the Forest Service, United States Department of Agriculture.

Forest Service acceptance of the donation will require review of the title to make sure it meets Department of Justice Title Standards for federal land acquisition. If it does not meet this standard the City agrees to work to remove title conditions and exceptions that are unacceptable to the Forest Service.

The Forest Service agrees to inspect the property and complete an Environmental Site Assessment as described in the American Standards for Testing and Materials (ASTM) E-1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental

Site Assessments; and United States Department of Agriculture (USDA) / United States Department of the Interior (DOI) Pre-Acquisition Environmental Assessment Guidance for Federal Land Transactions. The City should make every effort to participate in the inspection. Should hazardous material concerns be identified in the Phase 1 report they would need to be addressed to the satisfaction of the Forest Service before a donation could be accepted.

2) Clean up the equipment and buildings left at the exploration site and restore the land to a condition suitable for regrowth by native vegetation. The equipment and buildings are located at the very east end of the property documented by photos. The cleanup will require access to the exploration site via an existing road crossing USFS property.

The Forest Service agrees to evaluate in accordance with the Alaska National Interests Land Conservation Act (ANILCA) of 1980 the suitability of the Secretary granting temporary access across Wilderness and the conditions necessary to insure that access is accomplished in a manner that is not inconsistent with the purposes for which the public lands are reserved and which insures that no permanent harm will result to the resources of the area.

3) Quantitatively Inventory the properties for wetlands and conduct wetlands delineation for wetlands on the Boomer property. This delineation will serve as quantitative inventory of wetlands and waters of the United States to be used as total mitigation for impacts on Waters of the United States and wetlands relative to the Blue Lake Project Expansion. The Blue Lake wetlands delineation and functional analysis, including both field and office work has been completed.

The City further proposes to mitigate the loss of Waters of the United States located in the inundation area at Blue Lake with the donation of Waters of the United States located on the Boomer property as outlined in the Clean Water Act Section 404 permit application filed with the U.S. Army Corps of Engineers on July 23, 2012.

## **Recreation and Aesthetics, Wildlife Habitat and Botanical Resources.**

### **Description of Impacts**

**Recreation.** Restriction to reservoir access for the purposes of meeting the City's Watershed Control Plan (discussed under wildlife and water quality sections, above) would reduce recreation access for certain recreation elements resulting in no impact relative to access. However, recreational use of the reservoir has decreased in recent years (based on ADF&G harvest records) and ADF&G closed goat hunting in the Blue Lake drainage in 2011 due to over-harvest of females.

Surveys conducted by Sitka Conservation Society indicate there is significant recreation in the Blue Lake watershed, particularly in the Blue Lake Creek valley. Fishing in Blue Lake Creek, a high quality sport fishery which will be almost entirely eliminated by the dam raise. This impact is difficult to quantify, but, whatever the use level, it is recognized as significant based the qualities of the fishery and its surrounding environs.

# Attachment D

145 FERC ¶ 62,043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

City and Borough of Sitka, Alaska

Project No. 2230-053  
and -054

ORDER MODIFYING AND APPROVING MITIGATION AND MONITORING PLAN  
PURSUANT TO ARTICLES 405 AND 406

(Issued October 17, 2013)

1. On October 11, 2012, the City and Borough of Sitka (City), Alaska, licensee for the Blue Lake Hydroelectric Project (FERC No. 2230) filed the project mitigation and monitoring plan pursuant to Articles 405, 406 and U. S. Forest Service (USFS) 4(e) condition 19 of the project license.<sup>1</sup> The Blue Lake Hydroelectric Project is located on Sawmill Creek in the Borough of Sitka, Alaska. The project occupies federal lands managed by the USFS within the Tongass National Forest.

LICENSE REQUIREMENTS

2. Article 405 requires, in part, the licensee to file the project mitigation and monitoring plan per USFS 4(e) condition 19, for Commission approval, within ninety days of the date of issuance of the license amendment.<sup>2</sup> USFS 4(e) condition 19 requires the plan shall include detailed descriptions of the mitigation and monitoring measures, implementation schedules (including public notification strategy), and detailed steps for planning, design, and construction, etc. of the approved measures. The plan shall also provide a mechanism for the licensee to meet periodically with the USFS to review and modify the implementation schedule of the measures. The licensee is required to prepare the project mitigation and monitoring plan in consultation with the USFS and interested stakeholders.

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<sup>1</sup> See Order Amending License and Revising Annual Charges, issued May 30, 2012 (139 FERC ¶ 62,165).

<sup>2</sup> On August 30, 2012 the City and Borough of Sitka, Alaska, filed a request for extension of time and proposed filing mitigation plans by September 30, 2012 and monitoring plans by October 30, 2012. Both the mitigation and monitoring plans were filed on October 12, 2012.

3. As a component of USFS 4(e) condition 19, Article 406 requires the licensee to develop a grassland mitigation measure to compensate for reductions in grasslands caused by the project. As part of the measure the licensee is required to develop a monitoring plan to measure natural generation of wetlands around the new high water elevation and develop mitigation measures to ensure wetland functions are restored and the effects on wetlands are minimized.

#### LICENSEE'S PROPOSED PLANS

The licensee combined the requirements of articles 405 and 406. Both articles are components of USFS 4(e) condition 19, project mitigation and monitoring plan. In consultation with the USFS, the City has separated the mitigation plan from the monitoring plans.

##### Mitigation Plan

4. The City's mitigation plan addresses resource-specific impacts based on the analysis in the environmental assessment (EA).<sup>3</sup> The mitigation plan divides project resources into three categories: (1) resources with no impacts; (2) impacts to resources to be addressed through avoidance measures; and (3) unavoidable impacts to resources for which mitigation is proposed.

5. The avoidance measure proposed are gates to restrict increased access to the reservoir by recreationists using motorized boats. The reservoir is the municipal water supply for the City and maintaining water quality is of primary importance. Unavoidable impacts include the permanent loss of timber, recreation, subsistence, wildlife habitat, aesthetics, and botanical resources around Blue Lake due to the raised water levels and inundation of 362 acres, including the loss of 15.2 acres of wetlands and 32.7 acres of stream channels.

6. In consultation with stakeholders, the City proposes the following mitigation measures: (1) donate 48 acres of land on Chichagof Island to be incorporated into the West Chichagof-Yakobi Wilderness Area; (2) a quantitative inventory of wetlands and conduct wetlands delineations on the donated land, which will serve as total mitigation for impacts on waters of the United States and wetlands relative to the Blue Lake

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<sup>3</sup> On January 12, 2012, Commission staff issued a draft environmental assessment in response to the City's proposal to raise the dam, expand the reservoir, and modify other project features. The final environmental assessment was issued concurrent to the Order Amending License and Modifying Annual Charges, issued May 30, 2012 (139 FERC ¶ 62,165).

expansion;<sup>4</sup> (3) fund a campground host at the Sawmill Creek campground at \$10,000 per year for the term of the license, payable to the USFS, as well as absorbing the cost of electrical service to the campground host site and service to the vault toilets; and (4) directly fund the Redoubt Lake fertilization project in the amount of \$10,000 per year for ten years or as long as the fertilization project is continued.

7. Additionally, the City will establish a mitigation escrow fund in the amount of \$50,000 to be used in addressing unforeseen impacts to any resource arising during or after construction. The City will use part of the fund to mitigate for reservoir access impacts on recreation as suggested by the USFS as a comment on the reservoir access plan.<sup>5</sup>

### Monitoring Plans

8. The City subdivided the monitoring plan into the following parts: (a) final grassland mitigation and monitoring plan; (b) revised final cultural resources protection and monitoring plan; (c) final fisheries monitoring plan; and (d) final wildlife monitoring plan.

9. The City's grassland mitigation and monitoring plan proposes to provide pre-construction and post-construction monitoring of grasslands and post-construction monitoring of existing and future wetlands above the 425-foot contour elevation mean sea level (msl). Post monitoring, the City will compare actual grassland areas in both the pre- and post-expansion growth zones. If grasslands have not been fully replaced, mitigation of grasslands losses will be addressed through agency consultation. Additionally, if wetland functions have been damaged in the lands adjacent to the full reservoir, the City will restore or mitigate for those losses by utilizing the mitigation escrow fund.

10. The revised final cultural resources protection and monitoring plan indicates: (1) the licensee shall not initiate any work other than that specifically authorized in the project license before consulting with the USFS, the Alaska State Historic Preservation

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<sup>4</sup> A quantitative functional analysis of impacts to wetlands and waters of the United States was performed by DOWL HKM, dated November 2011. The U. S. Army Corps of Engineers (Corps) provided an approved jurisdictional determination of the inundation area on July 5, 2012. The City outlined the wetland mitigation proposal in the Clean Water Act Section 404 permit application filed with the Corps on July 23, 2012.

<sup>5</sup> The reservoir access plan is a requirement of article 415 of the project license and was filed by the City on August 2, 2012.



Officer (SHPO), and the Tribes consulted during the licensing process; (2) conducting a cultural resources survey of these areas; and (3) filing a USFS approved Cultural Resources Management Plan (CRMP) to avoid or mitigate impacts to any archeological, cultural, or historic sites encountered during the project implementation or cultural resource survey. Prior to the onset of construction, the CRMP will be developed in consultation with the USFS and submitted to the Sitka Tribe of Alaska (Tribe) and SHPO for concurrence. The licensee will file the CRMP for Commission approval. Additionally, the licensee, in cooperation with the USFS, will develop a memorandum of understanding (MOU) in consultation with the SHPO and Tribe to mitigate any adverse effects. The MOU will be based on the CRMP. Signatories to the MOU will be the USFS, the City, Tribe, and SHPO.

11. The City's fisheries monitoring plan will fund and conduct a series of studies beginning prior to construction and continuing for three years after reservoir filling, covering a period approximately beginning in 2013 and ending in 2018. The plan provides a method to detect water quality changes resulting from construction; assess predictions of Blue Lake inflow tributary access and habitat availability; and measure predicted water temperature regime in lower Sawmill Creek, as well as effects on pink salmon spawning and emergence timing. Any necessary mitigation measures indicated by the analysis will be determined in cooperation with the appropriate resource agencies and funds would be available from the mitigation escrow fund for unforeseen impacts.

12. The final wildlife monitoring plan provides the City will conduct a series of wildlife monitoring studies beginning prior to construction and continuing for three years after reservoir filling, covering a period beginning in 2012 and ending in 2018. The monitoring studies are divided in to four parts: (1) pre-construction monitoring focusing on establishing baseline surveys and updating wildlife temporal and spatial use of the project area; (2) monitoring during construction focusing on assessing effects on wildlife from activities in construction areas; (3) monitoring during filling of the reservoir focusing on wildlife responses to raising the water levels; and (4) long-term operation monitoring using standard field methods, as well as analysis of data from prior study periods to assess the impact of the project on wildlife. Any necessary mitigation measures indicated by the analysis will be determined in cooperation with the appropriate resource agencies.

13. For both the wildlife and fisheries monitoring plans, the City will prepare an annual report of all wildlife monitoring study results for the previous calendar year and distribute the report to appropriate resource stakeholders prior to March 1. The City will meet with appropriate resource stakeholders once per year thirty to forty-five days after issuance of the annual monitoring report to discuss, evaluate, and if necessary, redirect the monitoring program. The report will contain copies of all field notes. Following the annual meeting, the City will prepare a draft monitoring study plan documenting the time period, study areas, and study methods for the upcoming calendar year and will distribute

the draft plan for stakeholder review. Stakeholder comments will be incorporated with the objective of addressing all reviewer concerns without dispute.

## CONSULTATION

14. The City met with stakeholders (Sitka Conservation Society, Tribe, and USFS) on July 20, 2012, to discuss mitigation measures. Agreement was reached at this meeting regarding the mitigation measures described in the final mitigation plan. The USFS provided written comments on August 1, 2012, and the Corps provided written comments on August 16, 2012. The comments consisted of minor editorial changes and requests to provide additional language. The City incorporated all language and comments into the final mitigation plan without dispute.

15. The City provided the USFS with a draft copy of the grassland mitigation and monitoring plan on August 14, 2012. The USFS provided written comments on August 31, 2012. The USFS suggested consultation with the Corps regarding forested wetlands and additional language regarding the natural generation of wetlands around the new high water mark. The City indicated that the Corps had reviewed the wetland delineation and issued a jurisdictional determination and further consultation was not required. The City incorporated the additional language requested by the USFS into the final grassland mitigation and monitoring plan.

16. A draft copy of the cultural resources protection and monitoring plan was distributed on May 11, 2011 to the USFS, Tribe, and SHPO. Comments were received via email from the Tribe on June 1, 2011. In addition to editorial comments and request for clarification of acronyms, the Tribe suggested developing a MOU prior to construction and that Tribe be a signatory to the MOU. The City revised language in the final plan to incorporate Tribe's comments. The City will develop a MOU based on the CRMP in cooperation with the USFS and in consultation with the SHPO and Tribe to mitigate any adverse effects. After the plan was distributed as final, the SHPO provided written comments on December 15, 2011, regarding certain findings and statements included in the final plan. On February 7, 2012, the City prepared a detailed response to the SHPO's comments. On April 6, 2012, the SHPO responded by letter indicating their concerns had been addressed.

17. A draft copy of the fisheries monitoring plan was distributed to ADFG, USFS, FWS, and the National Marine Fisheries Service in July 2011 and requested comments. No comments were received. A final version of the plan was distributed in October 2011. After a July 20, 2012 meeting with stakeholders, the licensee distributed the fisheries monitoring plan as an attachment to the revised draft mitigation plan on July 25, 2012. Comments were received from the USFS on August 2, 2012 regarding consultation with other agencies which was addressed by the City.

18. A draft copy of the wildlife monitoring plan was distributed in July 2011 requesting comment. No comments were received. However, upon review of the draft wildlife study plan for the City's Takatz Lake Hydroelectric Project (FERC No. 13234) the ADFG requested brown bears be tagged to address cumulative effects on Takatz and Blue Lakes. The City agreed to assist the ADFG by agreeing to tag two bears and provide tracking assistance. A final version of the plan was sent to stakeholders in September 2011 and no comments were received.

## DISCUSSION

19. The final mitigation plan meets the needs of stakeholders and the resource agencies and fulfills the requirements of USFS 4(e) condition 19 and Article 405. However, if extensive mitigation is required, the \$50,000 allocated for the mitigation escrow fund may or may not meet the need to implement remedial measures. The need for mitigation identified by the monitoring plans should not be limited to or designed to meet the funds available in the City's mitigation escrow fund. The City would be required to fund the full cost of any mitigation needed to meet the requirements of each monitoring plan.<sup>6</sup>

20. The final grassland mitigation and monitoring plan generally fulfills the requirements of Article 406 and USFS 4(e) condition 19. The City proposes to monitor both grassland regeneration and existing and future wetlands above the full pool reservoir (425-contour msl) for three years following attainment of full pool. To keep the Commission apprised, the City should file a report with the Commission describing the results of the monitoring program for both grasslands and wetland functions, including a detailed description of any required mitigation measures and a schedule for their implementation. Documentation of consultation with the USFS should be provided with the report.

21. The revised cultural resources protection and monitoring plan generally fulfills the requirements of Article 405 and USFS 4(e) condition 19. Prior to the onset of construction, the City includes a provision to file a copy of a USFS approved CRMP for

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<sup>6</sup> The Commission has consistently held that a spending cap is inconsistent with its responsibility to ensure that mitigation measures are carried out and to ensure that the public interest requirements of the FPA are met throughout the life of the license. See Thunder Bay Power Co., 88 FERC ¶ 61,078 (1999). See also Central Vermont Public Service Corp., 113 FERC ¶ 61,167 (2005); Power Authority of the State of New York, 105 FERC ¶ 61,102 (2003); Southern California Edison Co., 77 FERC ¶ 61,313 (1996); PG&E, 107 FERC ¶ 61,232 (2004), order on reconsideration, 108 FERC ¶ 61,266 (2004); Wisconsin Electric Power Co., 94 FERC ¶ 61,180 (2001); PG&E, 97 FERC ¶ 61,031 (2001); and Virginia Electric Power Co., 110 FERC ¶ 61,241 (2005).

Commission approval. However, since the SHPO determined during relicensing that the project would have no effect on cultural resources listed or eligible for the National Register and Article 403 of the license<sup>7</sup> requires the City to consult with the Commission, SHPO, and the Tribe, and file a site-specific plan if archaeological or historic sites are discovered during the license term, Commission approval is not required. To keep the Commission apprised of how the City intends to manage the future discovery of cultural resources, the City should file copies of both the USFS approved CRMP and the MOU signed by the USFS, the SHPO, and the Tribe.

22. The final fisheries and wildlife monitoring plans propose a combination of pre-construction monitoring to either establish baseline information or augment existing information; monitoring during construction; monitoring during the filling of the reservoir; and monitoring for long-term effect. The plans provide for annual reporting of monitoring results for the previous year and a proposed monitoring plan for the current year, with an opportunity for agency review and comment and will continue for three years following the reservoir attaining full pool elevation (425-contour msl). The City indicates that all comments and suggestions from the agencies will be incorporated without objection. Additionally, the City is proposing an annual meeting with resource agencies to facilitate the review and consultation process. To keep the Commission informed, the City should file copies of the annual monitoring reports, including a detailed description of any required mitigation measures and a schedule for their implementation. Documentation of consultation with the USFS and other resource agencies should be provided with the report.

23. The final mitigation plan, final grassland mitigation and monitoring plan, revised cultural resource protection and monitoring plan, final wildlife monitoring plan, and final fisheries monitoring plan with the proposed modifications meet the requirements of Article 405, Article 406, and USFS 4(e) condition 19 and should be approved.

**The Director orders:**

(A) The City and Borough of Sitka, Alaska's final mitigation plan, final grassland mitigation and monitoring plan, revised cultural resource protection and monitoring plan, final wildlife monitoring plan, and final fisheries monitoring plan with the proposed modifications filed October 11, 2012, pursuant to Article 405, Article 406, and U. S. Forest Service 4(e) condition 19 of the Blue Lake Project license as modified by ordering paragraph (B) through (E), is approved.

(B) By January 31, following the third year after the reservoir has achieved full pool elevation, the licensee should file a report with the Commission describing the

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<sup>7</sup> See Order Issuing New License, issued July 10, 2007 (120 FERC ¶ 62,024).

results of the monitoring program for both grasslands and wetland functions, including a detailed description of any required mitigation measures and a schedule for their implementation. The licensee shall prepare the report after consultation with the U.S. Forest Service. The licensee's report shall include documentation of consultation, including copies of comments and recommendations, and specific descriptions of how the agency's comments were accommodated in the report. If the licensee does not adopt a recommendation made by the agency, the filing shall include the licensee's reasons, based on site specific conditions. The licensee shall allow a minimum of 30 days for agency to review and provide comments on the report.

(C) Sixty days prior to the onset of construction, the licensee shall file a copy of the U.S. Forest Service approved cultural resources management plan and a copy of the memorandum of understanding signed by the licensee, the U.S. Forest Service, the Sitka Tribe of Alaska, and the Alaska State Historic Preservation Officer.

(D) By May 1<sup>st</sup> of each year, the licensee should file copies of the annual fisheries and wildlife monitoring reports. The reports shall include a summary of the previous year's monitoring results; items discussed during the annual meeting with the resource agencies; a description of any modifications to the monitoring program for the coming year; a description of any required mitigation measures; and a schedule for their implementation. The report shall include documentation of consultation with the U.S. Forest Service and the Alaska Department of Fish and Game, the Alaska Department of Environmental Conservation, and the U. S. Fish and Wildlife Service, including copies of comments and recommendations, and specific descriptions of how the agencies' comments were accommodated in the report. If the licensee does not adopt a recommendation made by the agencies, the filing shall include the licensee's reasons, based on site specific conditions. The licensee shall allow a minimum of 30 days for agency to review and provide comments on the report. The licensee shall continue to file reports until and including the third year after the reservoir achieves full pool elevation.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2013). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Robert J. Fletcher  
Chief, Land Resources Branch  
Division of Hydropower  
Administration and Compliance

Document Content(s)

p-2230-053.DOC.....1-9

# Attachment E



# DEPARTMENT OF THE ARMY PERMIT

Permittee: City and Borough of Sitka – Point of Contact: Dean Orbison

Permit No.: POA-2012-0441

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:** Upgrade the existing Blue Lake Hydropower facility to meet electrical needs of the community of Sitka, Alaska.

The following work below the Ordinary High Water Mark (OHWM) of Sawmill Creek and Blue Lake is authorized:

- 1) Discharge 8,000 cubic yards of concrete at the OHWM of the existing Blue Lake dam structure. The overall increase in dam area will be approximately 83' high x 256' wide x 8' thick.
- 2) Discharge 1,165 cubic yards of rock fill material below the OHWM of Sawmill Creek to create a scour wall and plunge pool area resulting in the loss of 0.005 acres of waters of the U.S.
- 3) Discharge 2,400 cubic yards of rock fill material below the OHWM of Sawmill Creek to permanently fill the existing tailrace (40' x 60') resulting in the loss of 0.05 acres of waters of the U.S.

All work will be performed in accordance with the enclosed plan (sheets 1-8), dated July 25, 2012.

**Project Location:**

The project site is located within Section 35, T. 55 S., R. 64 E., Copper River Meridian; USGS Quad Map Sitka A-4; Latitude 57.06232° N., Longitude 135.20033° W.; at the terminus of Forest Road 7577 in Sitka, Alaska.

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the work authorized ends on **October 31, 2017**. 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. 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.
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 Conditions:**

1) As compensatory mitigation for unavoidable impacts to waters of the U.S., the permittee shall preserve 3.04 acres of wetlands. The 3.04 acres of wetlands shall be located in the 48 acre tract adjacent to the West Chichagof–Yakobi Wilderness Area and further described in the Federal Energy Regulatory Commission (FERC) License Article 405, Final Mitigation and Monitoring Plan dated September 2012. The wetland shall be conveyed to the U.S. Forest Service, Tongass National Forest.

The permittee shall provide a delineation of the 3.04 acres within the tract within one-year of the date of this permit. Additionally, the permittee shall also provide documentation of the land conveyance described in the FERC License Article 405, Final Mitigation and Monitoring Plan once completed at the following address:

U.S. Army Corps of Engineers  
Sitka Field Office  
P.O. Box 16  
Sitka, Alaska 99835

- 2) The applicant shall not discharge fill material into flowing water. The project feature or equipment causing water to flow through the work area shall be shut down during times of discharge.
- 3) No fill or construction materials shall be stockpiled on adjacent wetlands outside the project boundary.

Any condition incorporated by reference into this permit by General Condition 5, remains a condition of this permit unless expressly modified or deleted, in writing, by the District Engineer or his authorized representative.

**Further Information:**

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

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

Don Oh GENERATION ENGINEER  
(PERMITTEE) AND TITLE

11/1/12  
(DATE)

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

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

11/2/12  
(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)