

## **PETITIONER'S REPLY**

**TO THE Sealaska COMMENTS RE:**

***THE PENDING PETITION TO THE LOCAL BOUNDARY COMMISSION FOR INCORPORATION OF EDNA BAY COMMUNITY AS A SECOND CLASS CITY WITHIN THE UNORGANIZED BOROUGH USING THE LOCAL OPTION METHOD***

### **Petitioner's Representatives:**

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### **INTRODUCTION**

**I. We question whether Sealaska is an interested party, but if it is, whether its goal in opposing Edna Bay's petition isn't really tax avoidance.**

**A. Is Sealaska an interested party when it pays no taxes and owns no land on Kosciusko Island?**

Commentator Sealaska Corp. owns no land on Kosciusko Island.

The corporation speculates that Congress will grant it title to National Forest Land around Edna Bay based on two bills going nowhere fast, S. 340 and H.R. 740. But Congress failed to pass similar legislation for approximately ten years.

Now stalled in Congress, their speculative land selections would result in activity that would threaten the economy of Edna Bay as it now exists and as it plans to expand in the future.

Sealaska, for instance, chose land in Edna Bay's identified hydroelectric watershed for clear cutting and it can reverse its choice at any time.<sup>1</sup> There are lodges trying to bring in sportsmen and the latter are not thrilled about fishing near a creek that has been clear cut. Just as Sealaska moved its selections away from the Waterfall Lodge in this year's version of S. 340, it can also move its selections away from Edna Bay.

This corporation has the same power to voluntarily move its proposed speculative selection away from Edna Bay as it had when the City of Craig and other Native Villages protested the locations of its prior selections in their municipal water and/or view sheds. It did move land selections of many square miles away from the Craig drinking water watershed.

Sealaska itself is a threat to the future viability/economy of Edna Bay unless the LBC grants second class city status to Edna Bay.

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<sup>1</sup> For the hydroelectric potential [of Survey Creek at D-6 on the petition map], see the three comment letters submitted for the Record by Mr. Greif, Ms. Heather Richter, and Ms. Carleigh Fairchild.

The corporation's brief at page 2 claims it has paid all taxes, but fails to disclose that **43 USC § 1636 - Alaska land bank** - and other Federal Laws exempts or shields Native Corporations from paying tax on timberlands before they are developed/cut, especially if they are placed into the Federal Land Bank. <sup>2</sup>

Sealaska apparently has never faced the question of whether a second class city can tax its clear cutting activities. The commission should consider as a condition of approval of the petition that Edna Bay enact a 10% tax on the ex vessel value of all timber harvested within the boundaries delineated in the petition.

Their history has been to cut all the timber in one area and then run, so a higher rate of tax accrues revenue in the short term for the lost revenue during the generations it takes to grow a new crop. <http://youtu.be/oRQre80IVj4>

There are discussions under way by the President of the Alaska Federation of Natives, Julie Kitka, to further shield native land from taxation. She recently stated "tribes [and she explicitly includes Regional Corporations as tribes] for the most part want the option of having their lands taken into trust." *page 3* Trust means no taxes. "Tribal trust lands, on the other hand, enjoy complete protection from state or local taxation, as well as from the exercise of eminent domain." *page 4*

<http://www.doi.gov/cobell/commission/upload/Trust-Statement-of-Julie-Kitka-81913.pdf>

All Sealaska needs to do to avoid conflict with the Edna Bay boundaries is to call the Alaska Senators who sponsored the four or five reincarnations of previous bills and ask them to move the several square miles of land that are selected within Edna Bay's petition boundaries to another location.

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<sup>2</sup> Only while timber is cut can taxes be collected on Sealaska Land under 907(d) of the Alaska National Interest Lands Conservation Act, **43 USC § 1636 - Alaska land bank**.

The Sealaska Bill S. 340 subjects all land conveyed to section 907(d) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1636(d)) which is cited in part here:

(d) **Automatic protections for lands conveyed pursuant to Alaska Native Claims Settlement Act**  
(1)

(A) Notwithstanding any other provision of law or doctrine of equity, **all land** and interests in land in Alaska conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] to a Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act [43 U.S.C. 1629e] to a Settlement Trust or conveyed to a Native Corporation pursuant to an exchange authorized by section 22(f) of the Alaska Native Claims Settlement Act [43 U.S.C. 1621 (f)] or section 3192 (h) of title 16 or other applicable law **shall be exempt, so long as such land and interests are not developed or leased or sold to third parties from—**

(ii) **real property taxes by any governmental entity;**

(ii) land upon which timber resources are being harvested **shall be considered developed only during the period of such harvest** and only to the extent that such land is integrally related to the timber harvesting operation;"

<http://www.law.cornell.edu/uscode/text/43/1636>

Given the gridlock in Congress, the upcoming election year, and the fierce opposition Edna Bay and other communities on Prince of Wales have raised to Sealaska's Lands Bill<sup>3</sup>, there is, based on information and belief, a very good chance Congress will fail to consider Sealaska's Bill on the floor of both chambers and that they will therefore die in the 213<sup>th</sup> Session as they have in the past four sessions of Congress.

### **B. Is tax, health, and safety avoidance why Sealaska opposes the petition?**

In the remote possibility Congress grants Sealaska several square miles of land within the petition boundary, Sealaska's interest in preventing the formation of an Edna Bay second class city would be for the purpose of frustrating the fair exercise of the taxing and regulatory powers attached to a second class city.

The Commission should give much weight to Sealaska's interest in avoiding the taxation and regulatory functions the City of Edna Bay could exercise to preserve its unique karst derived watersheds, and foster the health and safety of its current and future residents, including loggers Sealaska regularly hires from the Lower 48.

It is our understanding that under current law, Alaska Boroughs may not tax Regional Native Corporations. However, we are unaware of any law that bars a second class city from imposing taxes on business activities of Regional Native Corporations.

The corporation's Brief avoided discussion of the ability of Edna Bay to tax Sealaska.

Millions of dollars of Sealaska activity within the boundaries may be open to taxation by Edna Bay, if the boundaries are accepted; or escape any taxation if the Commission does not accept the boundaries. Edna Bay's taxes on Sealaska would be analogous to the oil taxes the State imposes on nonrenewable resources, since clear cut logging can only occur every three or four generations.

We hope the LBC fully considers the substantial tax avoidance interest Sealaska has in opposing the formation of our city when it might be able to derive revenue from Sealaska's clear cutting activities. A tax on Sealaska's harvested timber and land carries the same degree of speculation on whether additional revenues would be available to fund essential services (that Sealaska protests Edna Bay will not be able to afford) as the Corporation's denial of whether Edna Bay's future remains bright.

Unlike the Naukati decision which rejected reliance for tax revenue on a single industry, susceptible to shut down by pollution or disease, a tax on Sealaska's timber cutting activities should be recommended by the LBC, because it is a dependable source that could provide a long term revenue solution for funding services such as water quality monitoring made necessary by logging activity.

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<sup>3</sup> <http://tongasslowdown.org/TL/docs/AOC%20comments%20on%20S730%20May%202011.pdf>  
<http://tongasslowdown.org/TL/docs/Territorial%20Sportsmen%202011%20S%20730%20TESTIMONY.pdf>  
<http://tongasslowdown.org/TL/docs/City%20of%20Thone%20Bay%20letter.pdf>  
<http://tongasslowdown.org/TL/docs/PoelstraTestimony2011.pdf>  
<http://tongasslowdown.org/TL/docs/sealaska%20leg%20MURKOWSKI.pdf>

The Alaska Permanent Fund is the brilliant creation of Jay Hammond's Administration which placed oil tax revenue into a reserve fund, the majority of which would be expended after the single resource extraction revenue stream dried up.

This rationale applies equally to second class city tax on massive cut and run timber harvesting. Sealaska's practice of massive clear cuts could destroy for generations other natural and recreational resources upon which the Edna Bay economy depends, but the short term boom in revenue (estimated at 5-8 years) could, if wisely placed into a rainy day account, provide for a long term dribble into the revenue stream of Edna Bay.

If Sealaska decides not to choose the 3-4 square miles of the karst headwaters of the watershed being studied for the essential service of a hydro plant, or destroy other natural resources like fish streams and view sheds upon which the economy depends, or pollute the water flowing under the 18 square miles of karst that may be the source of drinking water springs that arise in Edna Bay, the city of Edna Bay is viable without this revenue stream from the Corporation.

But if Sealaska gets its land and its activities impact the town's economic interests, this tax revenue stream may prevent Sealaska's activities turning Edna Bay into a ghost town.

## **II. Edna Bay is a Community under Alaska Law that may incorporate.**

As few as 25 residents are a "community" required for incorporation as a city under Alaska Law, as the standards were laid out in the LBC's 2006 *Naukati* decision, page 21, a section the Corporation chose to omit.

As the LBC noted in *Naukati*:

"AS 29.05.011(a) states that "a community" that meets the city incorporation standards may incorporate as a city. Further, 3 AAC 110.005 requires that "An area proposed for incorporation as a city must encompass a community." In 3 AAC 110.990, the term "community" is defined as "a social unit comprised of **25 or more permanent residents** as determined under 3 AAC 110.920." (*emphasis added*)

"3 AAC 110.920 also establishes several criteria the Commission may (*emphasis added*) consider in determining whether the locality proposed for incorporation comprises a community. Specifically, it states that the LBC may consider whether the settlement is inhabited by at least 25 individuals; inhabitants reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living; and inhabitants residing permanently at a location are a discrete and identifiable social entity, as indicated by such factors as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers." LBC *Statement of Decision in Naukati*, January 4th, 2006 at page 21.

Edna Bay, during the depth of the Great Recession which reduced populations in many Alaska cities, maintained almost twice the residents required under 3 ACC 110.920.

Moreover, unlike in Naukati which homeschooled their children, (see the *Naukati Decision*, page 22) Edna Bay has a school, teacher and staff, church, store, and a lodge, some of long duration. The LBC should therefore find that Edna Bay is a community under 3AAC 110.920 that is allowed Second Class City status.

Sealaska's arguments that Edna Bay is not a viable community, because of its current population and population trends, are hereby rebutted.

Population estimates made by commentator Sealaska are speculative and internally contradict its own citations. Moreover, the Corporation's stalled Land's Bill for 109 square miles of forest (about 18 square miles on Kosciusko Island) is a contributing factor to the failure of the town to grow.

The Commission should consider the grey cloud --- which the corporation's ten year effort to go outside its land boundaries specified in ANCSA ( as modified in 1975) to take land near our town -- has hung over economic development of the community.

For ten years, Sealaska's looming cloud of uncertainty has cast a shadow on potential development.

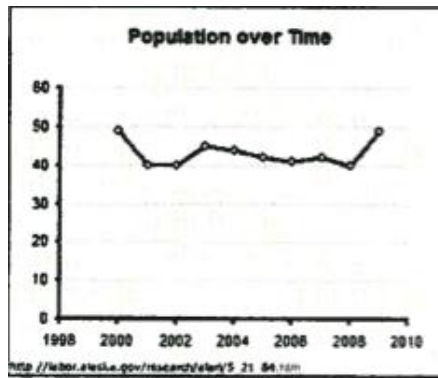
This decade long effort to jam legislation through Congress when the NRA, Territorial Sportsmen, Safari Club and nine communities in Alaska have opposed its enactment (see footnote 3), has been responsible for owners of property postponing decisions to build and occupy new homes.

Likewise, some businesses have been reluctant to expand or establish in Edna Bay while Sealaska persists pursuing legislation that could, by mowing down 18 square miles of forest, diminish timber availability to community mills, and ruin fishing, hunting, and recreational resources around Edna Bay.

The corporation argues Edna Bay is in decline and is not viable. Perhaps Sealaska ignores Edna's population has stabilized despite the extraordinary circumstances of the Great Recession (2008-present) where many communities in Alaska have experienced population declines.

Or it overlooks the shutdown of the pulp mills in the 90's and the subsequent decline of logging which provided jobs. Yet it uses peak logging activity in the 90's as a high data point of population to compare the slight decline in population of Edna Bay during the Great Recession over the last five years.

Even that unfair comparison of population data points is belied by the graph submitted for the record which indicates a remarkable resilience of population of stout hearts in the community. Sealaska's own attachment 6 in the Record shows Edna Bay's population holding more or less steady despite a severe recession since 2009. (See below)



Source: Sealaska's Attachment 6 For the Record at page 2 of 2

Sealaska's projections of Edna Bay's population are purely speculative since no one can predict with certainty employment opportunities, business growth, or future city expansion needs. Population fluctuations Sealaska cites buttress the case that Edna Bay is a stable community -- despite

- ❑ the Great Recession
- ❑ the bust of Pulp Mill employment in the late 90's and most importantly
- ❑ the long shadow Sealaska's decade long pursuit of over 18 square miles of the most productive commercial forest land on Kosciusko Island has cast upon Alaskans who consider settlement in Edna Bay.

Efforts by opponents, including nine Alaska communities, to defeat Sealaska's Land Legislation, or at least move its selections back to around its own communities where they were for over 35 years, may or may not prove victorious. But for the LBC to assume passage of the legislation and consider Sealaska an interested party would require more speculation than most bookies would bet on.

### **III. The Commission has granted second class city status to communities of comparable population as Edna Bay.**

A. Kasaan, a native village on Prince of Wales Island, had a population of 49 during the 2010 Census, the same as Edna Bay that year, yet Kasaan was granted second class city status when it was smaller in population than Edna Bay:

#### Kasaan Population History

1940	85
1950	47
1960	36
1970	30
1980	25
1990	54
2000	39

Source: Census History Department of Commerce

<http://commerce.alaska.gov/cra/DCRAExternal/community/Details/86bf03e7-a916-43d9-a99b-faf796d0d507>

B. Kupreanof is a second class city on Kupreanof Island that has a population under 30, smaller than Edna Bay's 49. When Kupreanof was granted second class city status in 1975, it had a population between 36 - 47, smaller than Edna Bay's current population.

Kupreanof, according to the Department of Commerce Records has only three business licenses, while Edna Bay has 15.

Source: Population History Department of Commerce

<http://commerce.alaska.gov/cra/DCRAExternal/community/Details/dd9e1299-8214-43c4-b9dc-1873d4978f20>

Edna Bay is fully justified in seeking land beyond its existing boundaries.

**IV. Under 11 AAC 110.040 c, inclusion of large unpopulated areas beyond existing community limits is justified whereas here a source of renewable hydropower has been identified that will foster the economy of Edna Bay if and only if the watershed of Survey Creek is included. (See map submitted with petition)**

[http://www.commerce.alaska.gov/dca/lbc/2013\\_Edna\\_Bay\\_Incorporation\\_Petition/1.%20Petition/Edna\\_Bay\\_Petition\\_Map\\_Ig.jpg](http://www.commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/1.%20Petition/Edna_Bay_Petition_Map_Ig.jpg)

The corporation protests the extension of the community's boundary where it overlaps 3-4 square miles of Sealaska speculative selection. This overlap occurs at the headwaters of a creek that provides tens of thousands of salmon, can power the community's hydro plant, and may be a location where water enters underground karst cavities to travel toward Edna Bay's springs.

The Community wants this overlapped area included within its boundaries to be able to ensure the viability of community service needs such as the hydro facility.

Just as Sealaska moved its selection out of the City of Craig watershed during this session of Congress when Craig protested its selection of land there, Sealaska can move its selection away from the Survey Creek watershed which is important to the future economic development of Edna Bay.

A call from the corporation to the Alaska Senators would get the proposed selection moved out of the Survey Creek Watershed.

Through the Alaska Energy Authority, Edna Bay is in the process of obtaining a contract with Hatch USA to complete a study of the hydro potential of this creek.

It is our information and belief that enough power could be produced from that watershed to vastly drop the cost of diesel electricity currently being generated and make new and existing businesses more competitive. For instance, this hydro source could enable an ice plant to operate which would attract more boats and enable a possible land based fish buyer and fish processing activity.

Just as the LBC allowed the City of Akutan (permanent pop. of 90) to annex over 150 more square miles of territory in part to include the municipal service of an airport, so too should Edna Bay be allowed to include the 2-3 sq. miles of Sealaska's speculative selections that lap both sides of Survey Creek in order to guarantee the unchanged water flow for hydroelectric power. Both extensions are for a vital community service.

[http://commerce.alaska.gov/dca/lbc/2011\\_City\\_of\\_Akutan\\_Annexation\\_Petition/Decision/Akutan Annexation Decision.pdf](http://commerce.alaska.gov/dca/lbc/2011_City_of_Akutan_Annexation_Petition/Decision/Akutan_Annexation_Decision.pdf)

Extension of the boundary to the Western extent is therefore fully justified.

**V. Further authority for Edna Bay selecting land beyond existing boundaries (which overlaps about three square miles of the over 18 square mile Sealaska speculative selection on the island) is found in 3 AAC 110.040. Boundaries**

In accordance with AS 29.05.011 (a)(2), the boundaries of a proposed city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level.

In this regard, the commission may consider relevant factors, including:

Hydroelectric power is an essential municipal service that cannot be provided unless land comprising the watershed of Survey Creek (the square mile sections 7 & 8, 18 & 17, 19 & 20, 30 & 29, 31 & 32) are included in the boundaries of the proposed City of Edna Bay. (See map submitted with the Edna Bay Petition)

[http://www.commerce.alaska.gov/dca/lbc/2013\\_Edna\\_Bay\\_Incorporation\\_Petition/1.%20Petition/Edna\\_Bay\\_Petition\\_Map\\_Ig.jpg](http://www.commerce.alaska.gov/dca/lbc/2013_Edna_Bay_Incorporation_Petition/1.%20Petition/Edna_Bay_Petition_Map_Ig.jpg)

Hydro power is far more cheap, clean, and reliable than the diesel generators now being used individually.

All of the watershed must be selected since the Karst geology of the watershed is sensitive to the inevitable soil erosion after massive clear cutting that is Sealaska's practice. See Hoonah's Legacy <http://youtu.be/oRQre80IVj4> . The LBC recognized and discussed the karst geology in the *Naukati Decision*.

An incineration site on USFS land within the proposed boundaries is an option as well since they should be sited miles from the community. This is another rationale for the size of the boundaries. You don't put dumps/incinerators downtown. And you don't put them near your source of drinking water. The size of the boundary is justified by the need to site this service far from sources that feed the springs and still not impact fish creeks.

**VI. The corporate boundaries of the proposed new city must be drawn in a manner allowing for the full development of efficient and cost effective essential services.**

Specifically, "AS 29.05.011(a)(2) requires that the boundaries of a proposed city include all territory necessary to provide municipal services on an efficient scale.



Further, 3 AAC 110.040(a) provides that, the boundaries of a proposed city must include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.

The latter provides that the LBC may consider relevant factors, including land use, ownership patterns, population density, existing and reasonably anticipated transportation patterns and facilities, natural geographical features, environmental factors, and extraterritorial powers of cities.” 2006 LBC *Naukati Decision* p 23

The entire watershed of Survey Creek is included within the boundaries, because it would provide the community with hydropower which is a cost effective and essential service. The watershed is a natural geographic feature. Therefore inclusion of the entire watershed is reasonable under AS 29.05.011(a)(2). The land and the water means not only the water in the creek but the water contained in the extensive karst land that feeds the creek and thus meets the criteria of 3AAC 110.040(a).

Moreover, full development of essential hydro power means all potential water flowing in the creek which means all the land that constitutes the watershed. (An Archimedean Screw would allow free fish passage if the site selected is within the spawning grounds of the creek.)

As for drinking water protection, see the discussion under public safety below for the demonstrated distances our spring water can travel within the karst system. The boundaries should include to the extent possible the furthest reaches of the karst pathways to our springs and further reaches means distances that may exceed ten miles from the source. The pathways are largely unmapped, though preliminary work has been done.

The 2006 *Naukati decision* cites porous karst terrain at *page 24*. In fact, the land in Edna Bay is highly developed underground water passages that can be subject to blockage from the kind of mass scale clear cutting of contiguous square miles that the corporation has done frequently in the past. We do not want Hoonah’s Legacy to become Edna Bay’s legacy. <http://youtu.be/oRQre80IVj4>

The boundaries also include roads whose legal ownership and right of use is not as the corporation speculated. The roads are owned by the state but cannot be legally repaired by them. We have attached a letter (see Exhibit 1) elaborating on this legal point which we submit for the record. Road maintenance is an essential service as is dock repair.

**3 AAC 110.040(b) requires that the boundaries of a proposed city include the territory comprising the current local community plus ... public safety needs. page 25 *Naukati Decision* 2006**

Public safety can include the quality of drinking water. Given the extensive karst system which feeds the springs of many homes and dye tests conducted which found underground water can move over a mile in one day within the karst system, likely under hills from other watersheds, it is necessary the community boundaries extend out miles from the existing community in order to protect the water supplies from the massive logging that may occur on either the USFS, State, Mental Health, or hopefully

not Sealaska Lands. Dye tests by competent geologists have discovered extremely fast underground transport of sediments (an artifact of logging and road building, which can negatively affect drinking water standards) is possible for springs that arise within or near the existing community and other places on the island which are fed from underground structures in the karst miles away. The distance of transport underground is also astonishing. The rate of flow can be 6500 feet a day, 915 feet of vertical distance, and at least three miles horizontal distance. It is strongly suspected greater distances are possible on the island.

**VII. What essential services a community should offer depends on what services are reasonably necessary for that community based on its economic ability and potential to provide services.**

The Corporation's reliance on the *Naukati* holding that a "feasible and plausible" operating budget did not exist (at *line 8 page 33* of the Decision) fails to distinguish Edna Bay's feasible and plausible operating budget which has a surplus between revenue and expenditure.

*Naukati's* \$92,000 **shortfall** was between the cost of its services and available revenue.

Edna Bay's **surplus** operating budget is feasible and plausible because its revenue exceeds expenditure.

Unlike *Naukati*, Edna Bay's revenue should more than cover the limited existing and anticipated services. The community does not own, but may contract with owners of heavy equipment based on the island. And the cost will be substantially lower than what the Department of Commerce found in analyzing *Naukati*, since the heavy equipment in Edna Bay, unlike in *Naukati*, is on site and available.

Because of the surplus, the petitioner's did not examine the property value and income of residents, and it was not questioned during the LBC technical review.

The community has met the requirements of 3 AAC 110.020. Resources and AS 29.05.011 (a)(3): "the economy of a proposed city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost-effective level.

The LBC should find we have identified:

(A) the reasonably anticipated functions of the proposed city are road and dock maintenance, as well as in this reply, hydroelectric generation, water quality regulation for local springs arising from karst miles beyond the current boundaries that currently provide pure drinking water to all individual systems, and possible solid waste disposal (incineration has been discussed);

(B) the reasonably anticipated expenses for docks and road repair which are outlined in the petition. The LBC should note State funds are available to cover the capital costs of the hydro-plant and transmission line with maintenance cost covered by power generation fees;

(C) the ability of the proposed city to generate and collect revenue at the local level is demonstrated by multi-year revenue flows from dock fees and fish tax. Indeed, additional revenue may be anticipated if the hydro station makes an ice plant and fish processor possible in that there will be more boats mooring, more people hired and these could offset anticipated outflows of revenue if the Corporation damages the view sheds and water quality of streams that sportsmen and commercial fishermen use.

Anticipated revenue loss would be directly tied to the Corporation destroying the experience that brings the dollars of sportsmen and fishermen into the community. (See *Hoonah's Legacy* <http://youtu.be/oRQre80IVj4>) Also contributing to revenue loss would be Sealaska destruction of deer and fish habitat, alteration of water flow and quality, and reduction in available prime timber.

The LBC should view *Hoonah's Legacy* <http://youtu.be/oRQre80IVj4> to inform itself of how Sealaska engages in massive clear cutting not allowed on Federal Lands and how it has impacted the hunting and fishing experience there as noted in the oral testimony of Jimmie Rosenbruch before the House Subcommittee on Indian Affairs on H.R. 740 this year.

It is expected the corporation's strip mining of the trees would result in fewer tourists and sportsmen to the lodges and discourage further investment in this growing segment of the community's economy;

(D) the reasonably anticipated income of the proposed city is demonstrated by the multiyear revenue inflows;

(E) the feasibility and plausibility of the anticipated operating and capital budgets of the proposed city through the period extending one full fiscal year beyond the reasonably anticipated date is derived from the experience of locals who have worked on roads similar to these, are long time loggers, contractors, or heavy equipment operators and who estimated the numbers based on their real world familiarity with both cost and the conditions in Edna Bay.

Edna Bay has not considered the speculative impact of having dozens of out of state loggers hired by the Corporation driving over the roads in the community in trucks. It is reasonable to assume they would create potholes sooner. However, since the Corporation does not even own the land, speculation about this issue is premature.

We believe the amount budgeted for road repair is reasonable-- if Sealaska does not obtain title to the land—since some of the petitioners are contractors and operators who are familiar with costs.

If the community were to tax the Corporation, additional revenue might offset this cost as well as the planning/legal costs of formulating regulations to insure the logging does not upset the water flow/quality, pertaining to the power and healthy water issues, through city boundaries.

If the community hydro project is funded by available State money, cheaper electricity would allow for a commercial ice machine and a possible small fish processor. Charlie Creek (D-5) on the map is a major ADFG catalogued salmon stream that ran thick with fish this year. It and Survey Creek have likely peak productions of 300,000 salmon. Damage to the creeks would damage the economy.

(F) the diversified economic base within the proposed city employs a store proprietor and post office manager, cottage renter, teacher, commercial fishermen, loggers, saw millers of trees on the island, a lodge and rentals for sportsmen/tourism, a retail store, an internet consultant and outside employment seasonally for mechanics and construction workers.

While these forms of employment might not match Juneau standards, they are typical of bush communities in Southeast Alaska and represent the best in hard core, rugged, hardworking individualism that has made Alaska great;

(G) valuation of taxable property within the proposed city was not provided since there are adequate revenues to cover budgeted expenditures;

(H) existing and reasonably anticipated industrial, commercial, and resource development within the proposed city are:

- the use of the MTF by the State of Alaska and other entities which would entail heavy road use for a time period subject to decisions the agencies will make as to when to log their respective lands.
- commercial fishing
- commercial logging and milling
- two construction contractors
- a school
- a church
- a store
- lodges
- rentals of homes and boats
- guiding to fish streams
- recreational hunting and fishing
- subsistence hunting and fishing
- an IT business
- future hydro plant and electrical grid
- consequent and contingent ice plant and possible fish processing<sup>4</sup>
- future city hall/community center
- future bulk fuel facility (survey scheduled Jan 2014 with construction mid-year)

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<sup>4</sup> Charlie Creek had one day peak escapement counts of 39,041 salmon in data from 1970-2003 and Survey Creek had one day peak escapements of 25,275 salmon over four years. Assuming a catch to escapement ratio of 5:1, total assumed production of Charlie Creek is 240,000 salmon and Survey Creek is over 100,000 salmon These are but two creeks on island, both of which Sealaska can impact: source SE Alaska Contingency Plan

- continued access to saw timber/milling from the National Forest
- possible solid waste disposal

While the corporation down plays the capacity of Edna Bay to survive, the skill set and determination of many of its residents who, along with Ketchikan and Sitka residents, have survived and adapted to the transition from an industrial old growth pulp mill dominated economy is one of several factors the LBC may consider including:

(A) land use within the proposed city is a mix of residences, mills, equipment storage, store, lodges, a dock and breakwater, roads, and the proposed hydro plant and future solid waste disposal option, possibly incineration;

(B) the need for and availability of employable skilled and unskilled persons to serve the proposed city government is demonstrated by the abilities of some to comment on the hydro project and petition, and others to build their own homes, maintain their own equipment and boats, and repair some of the roads while using hunting and fishing to supplement their incomes. The latter would do the necessary repairs.

(C) the reasonably predictable level of commitment and interest of the residents in sustaining a city government is high judging from the ability to interest the State in a hydro project, bulk fuel facility, the existence of a school and church, the petition, and the success effort so far to stop the Sealaska Lands Legislation which, when defeated for good, will unlock a large amount of time and effort for positive, entrepreneurial, and productive work.

Under **3 AAC 110.010. Need** and in accordance with AS 29.05.011 (a)(5), the community has demonstrated a reasonable need for city government and the LBC may consider the following relevant factors:

(1) the stable population which is transitioning from reliance solely on logging and commercial fishing to sport fishing and value added milling of logs, tourism, and light manufacturing which will be enhanced if the hydro project develops;

(2) the need to protect drinking water for public health and water flow for the general welfare of fish and hydro, keep roads and docks safe and secure for public safety, and promote a slow growth diversified economy.

(3) the need to be able to derive revenue from possible Corporate logging to offset impacts of a onetime boom and bust harvesting of a large portion of the timber on the island, the need to promote public electrification to attract and keep existing businesses and residents, and the need to maintain existing land and water transportation infrastructure in order to retain and attract new residents, provide access to streams and timber, foster exports, and keep people safe.

(4) that individual generators are expensive but adequate, the roads are navigable but not necessarily safe, and the dock is inadequate and in need of repairs.

(5) While the Corporation asserts that the USFS owns the roads and can repair them, the community has the understanding and belief that the corporation's opinion is based on the false assumption of a GIS analyst who works for them. The USFS cannot repair the roads legally, but a Second Class City can.

*It is our understanding and belief, which we have supported by documentation from USFS Forest Supervisor, Forrest Cole, that the State is the owner of the road but is legally unable to fix the roads. Only a city government is apparently able to repair the roads, because of unusual procedural errors that occurred when the State selected the land from the National Forest. (See attached Exhibit 1)*

*Due to this legal limbo of the roads, there is a strong and reasonable need for city status.*

Finally the LBC should consider the letter which launched the petitioner's quest for Second Class City status about five years ago. (See Exhibit 2 attached to this reply.)

Alaska DOT informed the community of grant and other money which is available only to Second Class Cities and above. Road repair money is also only available from DOT if the community is a recognized city, along with Community Development Block Grants.

Certainly, to meet our essential service goals that will foster economic development and provide for public welfare and safety, LBC's approval of the community's petition will allow Edna Bay to apply for relevant grants and other monies.

In closing, we would like to thank the LBC for the opportunity to submit this reply brief and hope that it provides an explanation of the reasoning and justification that went into developing our petition. We look optimistically forward toward a stable, bright future for Edna Bay and hope to be granted our request for incorporation as a second class city.

Thank you,

E. Lee Grief

We append the following for the record:

EXHIBIT 1

**From:** "Cole, Forrest -FS" <[fcole@fs.fed.us](mailto:fcole@fs.fed.us)>  
**Date:** December 5, 2013, 7:44:07 AM AKST  
**To:** "[csl.richter@gmail.com](mailto:csl.richter@gmail.com)" <[csl.richter@gmail.com](mailto:csl.richter@gmail.com)>  
**Cc:** "Dunham, Larry -FS" <[ldunham@fs.fed.us](mailto:ldunham@fs.fed.us)>, "Cole, Forrest -FS" <[fcole@fs.fed.us](mailto:fcole@fs.fed.us)>  
**Subject:** Edna Bay

Heather Richter and Members of the Edna Bay Community Association:

As previously discussed, the Edna Bay Community Association is engaged in the process to become a Class II community in accordance with State of Alaska regulations. As part of this process you have requested a letter of support from the US Forest Service.

The Forest Service has been unable to resolve transportation issues associated with the road through the Edna Bay subdivision to ensure continued safe access to National Forest lands on both sides of Edna Bay. As the road right of way is under the ownership of the Department of Natural Resources, the Forest Service has no authority to invest funds in upgrading this road. The numerous failing bridge structures along this route will ultimately eliminate access from east Edna Bay to West Edna Bay as it currently exists.

Discussion with the State of Alaska Department of Transportation and Public Facilities (ADOT), indicates that if Edna Bay were to become a Class II community and request public road authorities for ownership of this road it could qualify for Federal Highway funding for road improvements through the Federal Lands Access Program (FLAP) and other funding sources.

The Forest Service considers this to be very viable solution to the current problems associated with this access route to the National Forest and sees this as a win-win opportunity for the public at Edna Bay and the US Forest Service. Please consider this memo as a statement of our support for your efforts to move forward with becoming a Class II community. If you have any further questions please feel free to contact me at [907-228-6281](tel:907-228-6281) or email [fcole@fs.fed.us](mailto:fcole@fs.fed.us).

Sincerely,

Forrest Cole,  
Forest Supervisor  
Tongass National Forest

Sent from my iPad

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

STATEWIDE DESIGN & ENGINEERING SERVICES DIVISION  
*Ports and Harbors Section*

**SARAH PALIN, GOVERNOR**

3132 CHANNEL DRIVE  
P.O. Box 112500  
JUNEAU, ALASKA 99811-2500  
PHONE: (907) 465-3979  
FAX: (907) 465-2460  
TEXT: (907) 465-3652

December 15, 2008

Sue Crew  
Docks and Harbors Committee  
Edna Bay Community  
P.O. Box EDB  
Edna Bay, Alaska 99950

Dear Ms. Crew:

Thank you for your letter concerning harbor maintenance at the Edna Bay Refuge Float. I understand your concerns about the condition of the float, but I am not aware of any discretionary funds the department has for making an immediate repair or replacement of the float.

The Edna Bay Refuge Float is jointly owned by the Edna Bay Community Association and the department. The community owns the breakwater, the gangway, the float supporting the gangway, the stall finger floats, and the seaplane float. The department owns the L-shaped main float. Therefore, both the Edna Bay Community Association and the department are responsible for addressing the deferred harbor maintenance needs at the float.

Yes, I inspected the state owned portion on June 10, 2008. As a result, I can report that we raised the repair and replacement priority level of the Edna Bay Refuge Float to number six out of twenty-six department owned harbors. Similarly, repairs to the community's breakwater and the transition plate between the gangway float and the beginning of the L-shaped float should be high priorities for the Docks and Harbor Committee. If the department had unlimited state harbor maintenance funds, there are several heavy construction repairs that we would like to make to our L-shaped float. Unfortunately, the department has a deferred harbor maintenance backlog of over \$28 million.

I would encourage the Edna Bay community to consider incorporation under the state's Constitution as a second class city, or higher, in order to be in a better position to receive federal and state aid. For example, the department manages a 50/50 matching harbor grant program called the Municipal Harbor Facility Grant program, by which the state, subject to Legislative approval, can match local municipal funds dollar for dollar to make repairs and replace municipal owned harbor facilities.

In addition, there may be other government grant opportunities that the Edna Bay Community could pursue. The community may also want to contact the Alaska Congressional delegation to seek federal assistance or your state legislators to seek specific state funds for the Edna Bay community.

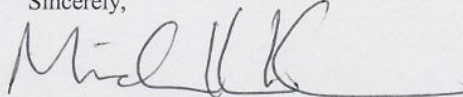
*"Providing for the safe movement of people and goods and the delivery of state services."*



One point of clarification, the department does not have a State Harbor Commission and I am not the State Harbor Commissioner. The department has one Commissioner. His name is Leo von Scheben. My title is the State Ports and Harbor Engineer. I manage the department's harbor facilities and the Municipal Harbor Facility Grant Program. The department's Southeast Region is responsible for maintaining the Edna Bay Refuge Float. Requests for harbor maintenance should be directed to Andy Hughes, Acting Regional Director, at 465-1763.

Please contact me at (907) 465-3979 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lukshin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Lukshin, P.E.  
State Ports and Harbors Engineer

cc: Randy Ruaro, Deputy Chief of Staff, Office of the Governor  
Leo von Scheben, P.E., L.S., M.B.A., Commissioner, DOT&PF  
Andy Hughes, Acting Southeast Regional Director, DOT&PF

## EXHIBIT 3

# *Municipal Government Structure in Alaska*

<http://commerce.alaska.gov/dnn/dcra/LocalGovernmentOnline/MunicipalGovernment/MunicipalGovernmentStructureinAlaska.aspx>

### **What are the powers and duties of municipalities?**

*All local governments in Alaska enjoy broad powers. Article X of Alaska's Constitution establishes the framework for local government in Alaska. Article X, Section 1 states:*

*The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.*

*A liberal construction shall be given to the powers of local government units. (Emphasis added)*

*All local governments have certain fundamental duties such as conducting elections and holding regular meetings of the governing bodies. Beyond that, the duties of municipalities in Alaska vary a lot. Duties of cities and boroughs vary depending upon their classification; city duties also vary based on whether they are located inside or outside organized boroughs.*

**Education** - *All organized boroughs as well as home rule and first class cities in the unorganized borough must operate municipal school districts. Second class cities in the unorganized borough and cities in organized boroughs are not authorized to do so.*

**Planning, Platting, and Land Use Regulation** - *All organized boroughs, along with home rule and first class cities in the unorganized borough must also exercise planning, platting, and land use regulation. Second class cities in the unorganized borough are permitted, but not required, to exercise those powers. Home rule, first class and second class cities in organized boroughs may exercise planning, platting, and land use regulation powers only if the borough has delegated those powers to them.*

**Tax Collection** - *Organized boroughs also have the duty to collect municipal property, sales, and use taxes if these taxes are levied within their boundaries.*

*Beyond these requirements, municipal powers are exercised at the discretion of local governments. Second class cities are not obligated by law to provide any particular service.*

Reading further in this same section we find:

*A guiding principle of the constitutional convention was that they did not want to force a particular form of government on any community or region of the state.*

*The constitutional framers attempted to create a system of local government that would be flexible enough to meet the desire for local control as well as the need to realize economies of scale through regional organization.*

*A major factor they considered was the diversity of economies and infrastructure.*