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SENT VIA FIRST CLASS MAIL & EMAIL

Amy Mead, Esq.
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Re: CBJ's Renewed Proposal for OHV Use at the Fish Creek Quarry

Dear Amy:

The above attorneys, licensed in Alaska, represent several North Douglas property owners who are gravely concerned about the City and Borough of Juneau's ("CBJ") recently-renewed proposal to allow Off-Highway Vehicle ("OHV") use in the Fish Creek Quarry.¹ As you may know, the CBJ Community Development Department previously proposed OHV use at the Fish Creek Quarry in 2007-2008.² In advocating the same, the CBJ pitted the North Douglas neighborhood against OHV users in a very intense debate – involving numerous meetings and hearings over approximately 14 months. Needless to say, that process was an emotional roller coaster for the neighborhood and not something that it expected to experience again. The CBJ's proposal was resoundingly denied by the Planning Commission in a 6-1 vote on June 24,

¹ See, CBJ Parks and Recreation Advisory Committee Agenda for November 5, 2013, at <http://www.juneau.org/parkrec/documents/11.05.13Agenda.pdf> ; See also, Options Being Considered for OHV Development, at <http://www.juneau.org/parkrec/facilities/documents/EngineeringpresentationofOHRVAternativesforPRACmtg11.5.13-2013.pdf>.

² See CBJ Conditional Use Permit Applications, USE2007-00038 and USE2008-00006.

2008.³ Among other things, the CBJ Planning Commission concluded that OHV use within the quarry and vicinity would: 1) pose “undeniable conflicts between uses,” 2) increase ambient noise to unacceptable levels and 3) “have a negative impact on residences; thus, affecting property values and neighborhood harmony.”⁴

Notwithstanding the above still-applicable conclusions and the Planning Commission’s resounding defeat of OHV use in the Fish Creek Quarry, the CBJ Assembly has apparently decided that fostering OHV use within this community is a top CBJ priority. This is despite the small percentage of OHV users within the community and the fact that the Borough’s lack of available and developable land makes our community relatively non-conducive to OHV use. The Assembly’s declaration that accommodating OHV use within the Borough is a top priority is also disconcerting in light of the other much higher priority issues the Borough faces such as affordable housing, finding long-term solutions concerning disposal of the community’s waste, and promoting economic development. Despite these realities, this past summer, CBJ elected to retain an OHV advocacy group, the National Off-Highway Vehicle Conservation Counsel (“NOHVCC”), to perform a site assessment of the area that the CBJ had already determined was best suited for accommodating OHV use. This area is located on over 1,500 acres of CBJ property out-the-road at 35-mile.⁵

Apparently many CBJ Assembly members have expressed frustration with NOHVCC’s site assessment. Nobody should be surprised, however, given NOHVCC’s subjective involvement and advocacy. Rather than focus on the property that NOHVCC was retained to evaluate (CBJ’s parcel at 35-mile), NOHVCC boldly declared that this 1,500 acre parcel is insufficient to satisfy the wants, needs and desires of the OHV users it represents.⁶ Instead, NOHVCC argues that not only should CBJ’s 1,500 acre parcel at 35-mile be developed for OHV use, but further, CBJ also needs to develop OHV use at two other locations. These additional sites are allegedly necessary to accommodate a youth training area and “kiddie track” as well as an OHV park and motocross track. NOHVCC asserts that somehow, the 1,500 acres that CBJ has already identified for OHV use out-the-road is insufficient to accommodate these supposedly much needed activities.⁷ Rather than recognize the NOHVCC assessment for what it is (a subjective wish list prepared by a single-interest group with a strong personal stake in the assessment’s outcome), the CBJ Community Development Department has apparently wholeheartedly embraced it.⁸

³ Planning Commission Notice of Decision, dated July 9, 2008. See, http://www.juneau.org/plancom/documents/NOD_USE07-38.PDF.

⁴ *Id.*

⁵ NOHVCC 35-Mile OHRV Park – Draft Site Assessment, dated July 1, 2013.

⁶ *Id.*

⁷ *Id.*

⁸ *Supra* at 1, n.1.

The CBJ Community Development Department has suggested that due to minor changes made in the present proposal for OHV use at the Fish Creek Quarry,⁹ this proposition is somehow distinguishable and should be more palatable to the neighborhood than the proposal in 2007-2008. This is not the case. The superficial changes made to the most recent proposal for OHV use of the Fish Creek Quarry are distinctions without a difference. In fact, the concerned citizens of North Douglas are now far more resolute, steadfast and determined to defeat this reincarnated plan than they were with CBJ's previous ill-advised attempt. Indeed, many within the neighborhood are appalled and incensed that they are being forced to wage this battle yet again: 1) after having been required to do so just a few years previous; 2) after the earlier proposal was so resoundingly defeated by the CBJ Planning Commission; and 3) in light of the obvious factual and legal flaws which exist concerning OHV use of the quarry in such close proximity to a long-standing residential neighborhood.¹⁰

Needless to say, should the CBJ's latest proposal for OHV use at the Fish Creek Quarry proceed beyond the CBJ Parks and Recreation Advisory Committee, litigation will quickly follow. Further, this will occur even before any substantive decision is made by the CBJ Planning Commission or Assembly. This litigation will focus on the fact that this issue was already raised and resoundingly defeated by the CBJ Planning Commission. Even if this legal challenge proves unsuccessful, CBJ can also expect a legal challenge regarding the substantive merits of any final decision allowing OHV use within the Fish Creek Quarry. This is because, as was demonstrated in 2007-2008, the concerned citizens of North Douglas have already established through expert witness and public testimony that OHV use in the vicinity of the quarry will have a significant negative impact on neighborhood harmony and property values.¹¹

In light of the foregoing, we request that the CBJ place an immediate "legal hold" on all information and documentation it possesses relating to either past¹² or present

⁹ The present proposal suggests OHV riders will attempt to be restricted to the quarry itself as opposed to using trails outside of the quarry as previously suggested. See Options Being Considered for OHV Development, Option C, at <http://www.juneau.org/parkrec/facilities/documents/EngineeringpresentationofOHRVALternativesforPRACmtg11.5.13-2013.pdf>.

¹⁰ The quarry is a mere 1,400 feet from private property lines. See *Fish Creek Off-Highway Vehicle Park – Noise Study*, p. 5, http://www.juneau.lib.ak.us/plancomm/documents/Noise_Study_5_30_08.pdf.

¹¹ The same conclusion which was also already adopted and made by the CBJ Planning Commission. See, Planning Commission Notice of Decision, dated July 9, 2008. See, http://www.juneau.org/plancom/documents/NOD_USE07-38.PDF.

¹² Documentation suggests that CBJ may have actually been considering OHV use within the Fish Creek Quarry as early as 2001. See, Email from Heather Marlow to Daniel Sexton, dated February 5, 2008, at http://www.juneau.org/plancom/documents/STF_USE07-38_AtH_000.PDF.

proposed OHV use within the Fish Creek Quarry. This legal hold should be implemented among all persons and within all departments of CBJ possessing this documentation, including but not limited to Parks and Recreation, Community Development, the Planning Commission, the Assembly, Lands and Resources, and Law. This legal hold should include, but not be limited to, the following forms of information on this topic:

- document files;
- spreadsheets;
- maps;
- databases;
- digital images (e.g., .jpeg. and .tif);
- office and personal emails (w/ attachments);
- instant messages;
- backup files;
- public comments;
- recordings and/or transcriptions of public hearings; and
- reports.

A legal hold is necessary to prevent spoliation of evidence. As you know, spoliation is an actionable tort in the State of Alaska.¹³ “Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.”¹⁴ Further, “[t]he obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.”¹⁵

Here, as suggested above, CBJ should reasonably expect litigation regarding any further suggestion that it is appropriate to use the Fish Creek Quarry for OHV use. Also, this litigation is likely to occur relatively soon, and in fact, before any final decision is made by either the CBJ Planning Commission or Assembly. While it is unfortunate that litigation may be required, CBJ should harbor no illusions regarding the consequences of such an ill-advised and inappropriate proposal, particularly given its previous consideration and decision.

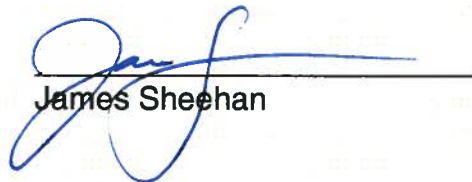
¹³ See generally, *Allstate Ins. Co. v. Dooley*, 243 P.3d 197 (Alaska 2010).

¹⁴ *Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422, 431 (S.D.N.Y. 2004).

¹⁵ *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003).

Also, we understand that a meeting may have been scheduled between several North Douglas neighborhood residents, Kim Keifer and Brent Fischer, for Thursday, November 14 at 2:00 p.m. We would like to potentially attend that meeting. As such, can you please let us know if you are available at that time and date to attend? If not, perhaps it can be rearranged for a time and date that is convenient. If you have any questions, please just let us know.

Sincerely,


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