

– Senate Bill 88 –

Submitted Testimony to Senate Resources Committee
3 April 2017

by

Suzanne Wood on behalf of the Mitkof Highway Homeowners Association
Petersburg, Alaska 99833

1. Chair Giessel and members of the Senate Resources Committee,
2. My name is Suzanne Wood. I am a co-founder and am representing the Mitkof Highway Homeowners Association (MHHA), a group of 95 local residents and homeowners, located in Petersburg on Mitkof Island in Southeast Alaska. My written comments pertain to Senate Bill 88.
3. The MHHA has actively supported the concept of a land exchange for the Alaska Mental Health Trust's Mitkof Highway hillside parcels since December 2005, understanding the risks to public safety from unwise timber harvest on already identified landslide prone slopes above inhabited areas, specifically the approximate contested 2600 acres above 3-Mile to 7-Mile Mitkof Highway (State Highway #7).
4. Following the Trust's 12 December 2005 public announcement to log their Petersburg steep and unstable hillside parcels, members of the MHHA met with the Petersburg District Ranger Patty Grantham, and Deputy Ranger Chris Savage on 31 December 2005, requesting the U.S. Forest Service's help in progressing a Forest Service-Trust land exchange for the Trust's Petersburg properties.
5. The MHHA embarked on a campaign to engage the Alaska delegation's support. In her 16 March 2006 letter to the MHHA (see Attachment 1), Senator Lisa Murkowski wrote,

In the event that the Trust elects to pursue a transaction with the Forest Service, I will be pleased to work with all interested parties to formulate a mutually acceptable proposal and to facilitate its consummation.

6. Tongass Forest Supervisor Forrest Cole informed the MHHA in May 2006 that he and the Trust's senior resource manager had identified several parcels around Ketchikan for exchange of the Trust's Petersburg hillside parcels. The Trust, however, went on to change their strategy from exchanging solely their Petersburg parcels to expanding the scope of the land exchange to include community holdings in Juneau, Ketchikan, Meyers Chuck, Sitka, and Wrangell, finalized in 4 September 2012.

7. The MHHA's attorneys, Dillon & Findley, P.C.,

- [following the death of Tom Findley, Kristen Miller, Esq., continues to represent the MHHA, joining Simpson, Tillinghast, Sorensen & Sheehan, PC in 2013]

successfully delayed the Trust's negotiated timber sale's spring 2006 start date, engaging the Trust to agree to participate in an assessment of the risks of logging their Mitkof Highway hillside parcels.

8. The MHHA's attorneys contracted with renowned landslide expert Douglas N. Swanston, Ph.D., CPG., who was familiar with the Petersburg Mitkof Highway hillside. During his tenure, in the 1970s, with the Forest Service, Dr. Swanston had conducted transects cross-slope above 3-Mile to 7-Mile Mitkof Highway.

- Dr. Swanston's risk analysis, *Assessment of Landslide Risk to the Urban Corridor Along Mitkof Highway from Planned Logging of Mental Health Trust Lands*, dated 6 June 2006, "A review of the Alaska Mental Health Trust parcels currently being considered for logging in the Petersburg area indicate a major stability hazard to the urban corridor from Scow Bay to the Twin Creeks valley [3-Mile to 7-Mile above Mitkof Highway], if logging of the parcels above and adjacent to Mitkof Highway is to occur. Field work was performed by Dunn Environmental Services."
- Please see Attachment 5 - U.S. Forest Service orthophotographic map. In response to the MHHA's 21 September 2006 *Freedom of Information Act* request to the U.S. Forest Service, then Petersburg District Ranger Patty Grantham wrote the MHHA:
 - *The specific reference materials providing the basis for landslide hazard soils, and "the procedure GIS followed to attribute this designation on the*

[orthophotographic] map provided to you in an earlier FOIA request [30 December 2005], included the following reports:

- Patricia Krosse, *Preliminary Soil Resource Inventory Report, Stikine Area, Tongass National Forest* (April 1993);
- Douglas N. Swanston, *Overview of Controlling Stability Characteristics of Steep Terrain in Southeast Alaska with Discussion of Needed Standardization for Mass Movement Hazard Indexing on the Tongass National Forest* (14 December 1995); and
- Douglas N. Swanston, *Assessments of Wildlife Viability, Old-growth Timber Volume Estimates, Forested Wetlands and Slope Stability* (March 1997).

9. The Trust contracted with Craig Erdman, employed by GeoEngineers, Inc., Washington State, for their risk report. Upon examination of Mr. Erdman's résumé, the MHHA found the State of California Board for Geologists and Geophysicists' *Enforcement Action* against Mr. Erdman (see Attachment 2 (1) Enforcement Action, and (2) Attachment 3 - MHHA letter dated 28 June 2007, from Charles E. Wood to Trust executive director Marty Rutherford; and (3) Attachment 4 - Dr. Swanston's Critique of: "Geotechnical Forestry Practices Evaluation Petersburg Slope Stability Assessment Petersburg, Alaska File Number 5342-004-00")

10. Both the Forest Service and Alaska's Division of Forestry independently and scientifically mapped

- A. See Attachment 5 U.S. Forest Service orthophotographic map detailing landslide hazard soils (specifically, the muted purple extending continuously from Section 10 to Section 26 of the Trust's hillside parcels within the overlay of the Trust's Petersburg hillside timber sale aliquot parts. The MHHA plotted the location of existing homes, future homesites, etc. lying beneath the Trust hillside parcels; and
- B. See Attachment 6 Board of Forestry's Scoping Map / Public Safety & Landslide Hazards / Mitkof Island Area — Note: bright red blob (acreage) parallel to Scow Bay along the *Wrangell Narrows*; detailed are nine landslides identified with event dates and locations. The MHHA plotted the landslides for the Board of Forestry's Landslide Science & Technical Committee.

the Trust's hillside parcels, identifying them as containing landslide hazard soils cross-slope, above 3-Mile to 7-Mile above Mitkof Highway. There have been nine (9) natural landslides crossing and closing Mitkof Highway to through traffic and emergency vehicles, damaging homeowner properties and structures, disrupting residential electrical power and communication services. These landslides occurred from October 1986 through to October 2012

- (1) and (2) 14 October 1986 (two separate threshold events, one mile apart); and
- (3) and (4) 30 November 1988 (two separate threshold events, one mile apart);

with five (5) additional slides occurring *following* the Trust's 12 December 2005 ([MHT 9100411 - Negotiated Timber Sale \[7 December 2005\]](#)) and subsequent 26 October 2016 ([MHT 9100855 - P-I Timber Sale \[11 August 2016\]](#)) public announcements and Best Interest Decisions to log their steep hillside slopes above Mitkof Highway (State Highway #7), our homes and property, and the Tyee hydroelectric utility transmission corridor:

- (5) 12 January 2009;
- (6) 20 September 2009;
- (7) 21-22 September 2009;
- (8) 23 September 2011; and
- (9) 28 October 2011

11. The MHHA testified before the House Resources Committee on 31 March 2012. House Bill 91 ([see Attachment 7, House Bill 91, 27th Legislature](#)), a citizen's initiative to amend the Alaska Forest Practices Act (FRPA) to include public safety as it relates to timber harvest on steep and unstable slide prone slopes above inhabited areas across Alaska, like here in Petersburg. The State Forester attached a fiscal note to the bill so it did not progress out of committee. Additionally, the Board of Forestry, after 4-1/2 years of discussion on *public safety*, twice voted by unanimous consent to pass off to Alaska communities through local zoning ordinances the State's obligation and authority to

manage timber harvests within Alaska's inhabited landslide hazard areas, thereby failing to address *public safety*. The Trust resource manager, in attendance at all BOF board meetings where the *public safety* issue was discussed, said that such redirection of authority to communities and their subsequent execution of these ordinances would be considered a *taking*, stating further that communities might be held financially accountable to the Trust for lost monetization opportunities from Trust timbered assets, despite the public safety risks.

12. The MHHA's 28 February 2012 letter to Chris Maisch, State Forester & Director/ Alaska Division of Forestry; Dan Sullivan, Commissioner/Department of Natural Resources; and Governor Sean Parnell (see Attachment 8) relating to the rationale for amending Alaska's Forest Resources & Practices Act to include public safety in logging practices within Alaska's inhabited forested areas. Representative Berta Gardner had asked Mr. Maisch on 31 March 2012 on the status of the State's reply to the MHHA. Mr. Maisch advised the letter was awaiting signature. To date, though we cannot speak for now Senator Berta Gardner, the MHHA who authored the letter never received a response.

13. The MHHA has focussed solely on the issue of public safety and the apparent risks of Trust timber harvest on their steep and unstable slopes above the Mitkof Highway corridor. However, these large timbered stands of Tongass rain forest old growth above 3-Mile to 7-Mile Mitkof Highway have, since issuance of Federal land and homesite patents in the early 1900s, provided a wide range of recreational opportunities including hiking, hunting, skiing, horseback riding, and more recently snowboarding and snowmobiling. These hillside parcels are included in Alaska's designated Scenic Byways.

14. The MHHA continues to support the exchange of the Trust's Petersburg hillside parcels above 3-Mile to 7-Mile Mitkof Highway. We have a high degree of confidence in the Forest Service taking ownership of these parcels. Their Petersburg District Ranger advised the MHHA on 31 January 2005 that the Forest Service could never log this area

as their land management standards and guidelines prohibit such activity and recognize the liabilities associated with timber harvest to downslope neighboring landowners/homeowners, including Mitkof Highway/State Highway #7, and the multi-million dollar Tyee hydroelectric utility transmission corridor. This land exchange would also eliminate the potential for risks of accelerated soil mass movement following Trust timber harvest, especially on slopes that have proven repeatedly to be demonstrably unstable in their natural state. A land exchange would eliminate associated risks to the Trust corpus from injury, death, or property damage following timber harvest.

15. The MHHA’s efforts to stop the Trust’s various Best Interest Decision monetization efforts for their steep and unstable Mitkof Highway hillside parcels

- [MHT 9100411 - Negotiated Timber Sale](#) [7 December 2005];
- [MHT 9100528 - Competitive Land Sale](#) [1 May 2007]; and
- [MHT 9100855 - P-I Timber Sale](#) [11 August 2016]

whether for timber harvest, or an outright land sale to a timber broker, now span 11 years and three months, with our expenses exceeding \$130,000. The MHHA has had to navigate a continuing change in Trust Land Office leadership and monetization policy, including:

Wendy Woolf, <i>Acting Executive Director</i>	12/2005 - 2/2007
Marty Rutherford, <i>Executive Director</i>	2/2007 - 8/2007
Wendy Woolf, <i>Acting Executive Director</i>	8/2007 - 8/2007
Harry Noah, <i>Executive Director</i>	8/2007 - 8/2009
Marcie Menefee, <i>Acting Executive Director</i>	8/2009 - 8/2010
Greg Jones, <i>Executive Director</i>	8/2010 - 8/2013
Marcie Menefee, <i>Executive Director</i>	9/2013 - 5/2015
John Morrison, <i>Acting Executive Director</i>	5/2015 - 10/2015
John Morrison, <i>Executive Director</i>	11/2015 -

16. Petersburg's public radio station, KFSK, interviewed the Trust Land Office's current executive director, John Mr. Morrison, following the Trust's public outreach meeting on 22 March 2017 where

"Some of those residents questioned the officials about how they could even consider logging there, given the risk of landslides.

"I understand," Morrison responded. "I wouldn't want to live at the bottom of a slide area or have something affect the area above my house. I certainly wouldn't want to do something that endangered people below our house, or below land that we owned. So we certainly are taking those things into consideration. And as I said, we are committing significant resources to moving this exchange forward including coming down for meetings like this and working with a number of interested parties."

17. The MHA supports Senate Bill 88 authorizing a land exchange of Trust parcels which states as one of its purposes, *that of preserving land adjacent to communities*, including Petersburg—that being the Trust's timbered lands above our homes and property, specifically 3-Mile to 7-Mile Mitkof Highway (State Highway #7), and the Tye hydroelectric utility corridor.

18. Thank you for this opportunity to provide written testimony, and supporting attachments.

19. Respectfully,
Suzanne Wood, Co-Founder
Mitkof Highway Homeowners Association
P.O. Box 383
Petersburg, AK 99833-0383
907-772-3480
fvtalon@icloud.com

LISA MURKOWSKI
ALASKA
MAJORITY DEPUTY WHIP

COMMITTEES:
ENERGY AND NATURAL RESOURCES
CHAIRMAN, SUBCOMMITTEE ON
WATER AND POWER

FOREIGN RELATIONS
CHAIRMAN, SUBCOMMITTEE ON
EAST ASIAN AND PACIFIC AFFAIRS

ENVIRONMENT AND PUBLIC WORKS
INDIAN AFFAIRS

Mr. Charles Wood
Co- Founder
Mitkof Highway Homeowners Association
Post Office Box 383
Petersburg, Alaska 99833-0383

United States Senate

WASHINGTON, DC 20510-0203

(202) 224-6665

(202) 224-5301 FAX

March 16, 2006

Attachment 1

510 L STREET, SUITE 550
ANCHORAGE, AK 99501-1956
(907) 271-3735

101 12TH AVENUE, BOX 7
FAIRBANKS, AK 99701-6278
(907) 456-0233

P.O. BOX 21647
JUNEAU, AK 99802-1647
(907) 586-7400

110 TRADING BAY ROAD, SUITE 105
KENAI, AK 99611-7716
(907) 283-5808

540 WATER STREET, SUITE 101
KETCHIKAN, AK 99901-6378
(907) 225-6880

851 EAST WESTPOINT DRIVE, SUITE 307
WASILLA, AK 99654-7142
(907) 376-7665

P.O. BOX 1030
311 WILLOW STREET, BUILDING 3
BETHEL, AK 99559-1030
(907) 543-1639

Dear Charles:

Thank you for contacting me about logging on lands owned by the Alaska Mental Health Trust land in the Petersburg area. I appreciate knowing your concerns.

The Alaska Mental Health Trust Authority operates under the auspices of the State of Alaska and its activities are not subject to Congressional oversight. The federal government is not in a position to consider an acquisition of the Trust's lands in the area you are concerned about – either through purchase or exchange – unless the Trust initiates these discussions. As of this date, the Trust has not contacted this office to express its interest in pursuing such a transaction.

In the event that the Trust elects to pursue a transaction with the Forest Service, I will be pleased to work with all interested parties to formulate a mutually acceptable proposal and to facilitate its consummation.

Again, thank you for contacting me.

Sincerely,

Lisa Murkowski
United States Senator

[HOME PAGE AND WEB MAIL](#)

MURKOWSKI.SENATE.GOV



BOARD FOR GEOLOGISTS AND GEOPHYSICISTS
2535 CAPITOL OAKS DRIVE, SUITE 300A, SACRAMENTO, CA 95833-2926
TELEPHONE: (916) 263-2113
FAX: (916) 263-2099
E-mail: geology@dca.ca.gov
Website: www.geology.ca.gov



Enforcement Action

Craig Erdman
Registered Geologist No. 6453
Certified Engineering Geologist No. 2026

The Board for Geologists and Geophysicists (Board) issued a citation and fine of \$2,500.00 to Mr. Craig Erdman, Registered Geologist No. 6453, Certified Engineering Geologist No. 2026 for violations of Business and Professions Code sections 7860(b) and section 7860(c) (negligence and incompetence in professional practice) and for violation of section 3065(a)(2) of Title 16, California Code of Regulations (CCR) (i.e., negligence and incompetence in professional practice).

Mr. Craig Erdman signed reports entitled "Engineering Geologist Evaluation", dated May 15, 2001 and "Response to 1st Review Comments Pertaining Geologic Conditions, Dump Gulch Timber Harvesting Plan", dated June 6, 2001, both of which were submitted to the California Department of Conservation, Division of Mines and Geology (now called the California Geological Survey or CGS). The aforementioned reports signed and certified by Mr. Craig F. Erdman as "R.G. 6453, C.E.G. 2026, Senior Geologist", demonstrate that Mr. Craig Erdman was in responsible charge of the professional geologic and engineering geologic site assessment work completed for the Dump Gulch Timber Harvesting Plan (THP 1-01-177 MEN).

Geologic work completed by Mr. Craig Erdman and documented in the above referenced reports incorrectly characterized slope conditions and failed to recognize landslide hazards present at the THP 1-01-177 MEN site and therefore departed from the standard of practice of a Registered Geologist or Certified Engineering Geologist conducting work under similar circumstances¹.

In accordance with section 125.9(d) of the Business and Professions Code which specifies that payment of the fine does not constitute admission of the violation charged and represents satisfactory resolution of the matter, Craig Erdman agreed to pay the fine and the case was closed on January 15, 2004.

¹ The standard of practice of a Registered Geologist or Certified Engineering Geologist working under similar circumstances as described hereinabove, requires that a reasonable professional submit an organized site assessment of geologic conditions that *factually* represents geologic datum in order that reasonable opinions, conclusions and recommendations are substantiated and logically presented in a technically defensible manner.

MITKOF HIGHWAY HOMEOWNERS ASSOCIATION

P.O. Box 383 • Petersburg, AK 99833 • 907-772-3480

Attachment 3

28 June 2007

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Marty K. Rutherford, Deputy Commissioner
Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501

Hi Marty,

Having had the opportunity to meet with you here in Petersburg last September, I am writing to you now as a courtesy, and out of respect for your past position as Executive Director of the Trust Land Office (“TLO”).

Under the advisement of our attorneys, Tom Findley (who as you know passed away on October 22, 2006) and Kristen Pettersen, we of the Mitkof Highway Homeowners Association (“MHHA”) have refrained from publicly presenting the following information in the past out of respect for the subject geologist’s privacy. However, in the wake of the TLO’s most recent Best Interest Decision, we have come to realize that the TLO’s Acting Executive Director Wendy Woolf has persisted in placing great weight on this particular geologist’s opinions and turning a *blind eye* to the conclusions of Dr. Douglas N. Swanston in her decision-making regarding their Mitkof Highway corridor parcel. We do not know the degree to which you remain involved in TLO matters but I trust that, based upon our past communications, if you are not now aware of the following information you would want to be made aware of it.

The MHHA is willing to provide the entire *Enforcement Action*¹ documentation^{2,3,4} upon request. Part of the *Enforcement Action* reads:

¹ Enforcement Action; BOARD FOR GEOLOGISTS AND GEOPHYSICISTS, Sacramento, CA.

² MINUTES OF THE MEETING OF THE BOARD FOR GEOLOGISTS and GEOPHYSICISTS, April 23, 2004, Sacramento, CA; #16. Enforcement Report.

³ CITATION ORDER (Negligence and Incompetence), BOARD FOR GEOLOGISTS AND GEOPHYSICIST, Sacramento, CA, November 17, 2003.

⁴ Board Internal Technical Report, BOARD FOR GEOLOGISTS AND GEOPHYSICIST, transmitted September 6, 2006.

“Geologic work completed by [geologist’s name] and documented in the above referenced reports incorrectly characterized slope conditions and failed to recognize landslide hazards present at the THP 1-01-177 MEN site and therefore departed from the standard of practice of a Registered Geologist or Certified Engineering Geologist conducting work under similar circumstances”⁵

This is the same geologist that came to Petersburg on September 5, 2006 with you, Doug Campbell, and Clare Doig, and represented the report, *Geotechnical Forest Practices Evaluation/Petersburg Slope Stability Assessment/Petersburg, Alaska / July 13, 2006 for Alaska Mental Health Trust Land Office*”, which he was contracted to do for the TLO, to the Mayor and City Council of Petersburg.

The circumstances are eerily similar: Two reports, each downplaying the effects of logging on steep, unstable, landslide-prone hillsides above a highway (*California Highway #1*, and *Alaska State Highway #7*), and the potential for increased risks to public safety by accelerated debris flow. Both clients, Campbell Timberland Management, Inc.⁶, and the TLO⁷, directly benefited by this geologist’s illicit use of his geological and engineering degrees.

As in California, but now concerning the TLO’s Petersburg Mitkof Highway hillside parcel, this geologist incorrectly assessed many hillside slope inclines and downplayed their steepness while exaggerating the number of benches and their effect on mitigating soil mass movement⁸. This was ascertained by Art Dunn of Dunn Environmental Services⁹.

⁵ The standard of practice of a Registered Geologist or Certified Engineering Geologist working under similar circumstances as described hereinabove, requires that a reasonable professional submit an organized site assessment of geologic conditions that *factually* represents geologic datum in order that reasonable opinions, conclusions and recommendations are substantiated and logically presented in a technically defensible manner. State of California, State and Consumer Services Agency; Board of Geologists and Geophysicists; Sacramento, CA.

⁶ *Engineering Geologic Evaluation, Dump Gulch Timber Harvest Plan, T23N, R17W*, sections 9, 10, 15, and 16 MDB&M, Mendocino County, California (15 May 2001).

⁷ *GeoTechnical Forest Practices Evaluation/Petersburg Slope Stability Assessment/Petersburg, AK/July 13, 2006 for Alaska Mental Health Trust Land Office by GeoEngineers, File No. 5242-004-00* by Craig F. Erdman and Galan W. McInelly (5 September 2006).

⁸ Critique of: *Geotechnical Forestry Practices Evaluation Petersburg Slope Stability Assessment Petersburg, Alaska File Number 5342-004-00* by Dr. Douglas N. Swanston, p. 2 (30 August 2006).

⁹ *APPENDIX A, Report on Field Investigations, Mitkof Hwy. Area, Petersburg, AK* for Dillon and Findley, PC; Dunn Environmental Services; Juneau, AK, by Art Dunn (22 May 2006).

Among the myriad other technical errors identified by myself^{10,11} and others^{12,13,14}, this geologist also identified *Taain Creek* as an *alluvial fan*¹⁵. Dr. Swanston identified *Taain Creek* as a *debris cone*. It is my belief that any honest and competent geologist would agree with Dr. Swanston's description.

Though I am not a geologist, I believe the deltas of the *Susitna* and *Knik Rivers* that are near the city of Anchorage, for example, more clearly define an alluvial fan than does *Taain Creek*. *Taain Creek* does not slow, begin to meander and deposit alluvium (silt/sand) anywhere along its course, all the way to the minus tide line in *Wrangell Narrows*. There are no mud flats at the terminus of *Taain Creek*. The streambed itself consists of pebbles, cobbles, and boulders with little sand and no mud^{16,17,18,19,20}. It remains a clear, swiftly flowing mountain stream all the way to its confluence with the *Wrangell Narrows* and salt water^{21,22,23}.

It is our contention that this geologist willfully and maliciously used his degree in geology and engineering as a weapon against the local residents of Petersburg, as well as those

¹⁰ *GeoEngineers Risk Assessment – July 13, 2006 / Alaska Mental Health Trust Negotiated Timber Sale • Petersburg, AK – CRITIQUE: SUMMARY OF INCORRECT STATEMENTS* by Charles E. Wood, revised July 21, 2006.

¹¹ *GeoEngineers Risk Assessment – July 13, 2006 / Alaska Mental Health Trust Negotiated Timber Sale • Petersburg, AK – CRITIQUE: QUESTIONABLE STATEMENTS AND ASSUMPTIONS* by Charles E. Wood, revised July 21, 2006.

¹² *Critique of GeoEngineers' Report* by Michele J.W. Pfundt, J.D. (5 September 2006).

¹³ *A Critique of Alaska Mental Health's Landslide Analysis* by Larry Mayo, Petersburg, AK (6 November 2006).

¹⁴ Video: Petersburg City Council Meeting – September 5, 2006, by Avian Ascent.

¹⁵ There are at least four other local streams within a 5-mile radius from *Taain Creek* that do meet the description of an alluvial fan and include *Petersburg Creek*, *Scoggs Creek*, *Twin Creek* and *Falls Creek*.

¹⁶ Aerial photograph: 2006.0208ew heli 6 118 (8 February 2006).

¹⁷ Photograph: 1986.1014rp taain 5.8 23 (14 October 1986).

¹⁸ Video: AMHT Timber Sale (Draft 5/06), by Avian Ascent.

¹⁹ Photograph: 1986.1014rp taain 5.8 24 (14 October 1986).

²⁰ Photograph: 1986.1014rp taain 5.8 25 (14 October 1986).

²¹ JPEG 1798-215, USDA-F; 12 610021, 1998 Aerial Photos, #051227 1129, U.S. Forest Service, Petersburg Ranger District.

²² Ortho Photographic map, U.S. Forest Service, Petersburg Ranger District.

²³ Map: Petersburg Area; TLO land estate; Forest & Land Management, Inc. (30 April 2003).

transiting the Mitkof Highway corridor (*State Highway #7*)²⁴, as it appears he did along *California Highway #1*.

The TLO, the AMHTA, as well as the general public were poorly served by this man, and the stain of his hire by the TLO has caused a major distrust of that agency by members of the MHHA that has not alleviated since your departure as Executive Director.

You stated at the September 5, 2006 Petersburg City Council meeting that you had never met him prior to your coming to Petersburg. You said that the TLO had looked for and had hired the “*best advice, best firm*”²⁵, that the TLO could find. We believe you were being truthful.

However, we (MHHA) consider the negligence by the TLO in the hire of this geologist as a betrayal of the public trust.

This betrayal has cost members of the MHHA over \$95,000 to date, and is still climbing. Because of TLO actions, litigation is no longer an abstract idea for the future, but instead has become a looming and impending probability.

For private citizens (MHHA) to have to defend themselves against government agencies such as the TLO and the Alaska Mental Health Trust Authority (“AMHTA”) when those agencies have continued to use a flawed risk analysis²⁶ with seriously flawed conclusions²⁷ written by a geologist of his character, is morally wrong, unethical, and probably illegal. The legality issue will, of course, have to be determined by a court of law.

For myself, I am continually amazed by the absolute thoughtfulness of those Alaskans who wrote with such clarity in Article I, Section 1 of the “Alaska Constitution”:

“This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.”

²⁴ State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys; Alaska Report Investigations 83-17, GEOLOGIC HAZARDS IN SOUTHEASTERN ALASKA: AN OVERVIEW by R.A. Combellick and W.E. Long, pp. 7-9 (July 1983).

²⁵ *KFSK Public Radio*, audio recording for Petersburg City Council Meeting (5 September 2006).

²⁶ *Geotechnical Forest Practices Evaluation / Petersburg Slope Stability Assessment / Petersburg, Alaska for Alaska Mental Health Trust Land Office* by Craig F. Erdman and Galan W. McNelly (13 July 2006).

²⁷ *GeoEngineers’ Consultation Services / Peer Review of Swanston Report / Petersburg Timber Sale / Petersburg, Alaska / File No. 5242-004-01* by Craig F. Erdman and Galan W. McNelly (5 September 2006).

My understanding of these words is that every person has equal constitutional rights while others have additional rights by statute (Trust beneficiaries). Though I am not a legal or constitutional scholar, I believe constitutional rights take precedence. Government agencies such as the TLO or AMHTA cannot manage Trust property **solely in the best interest of Trust beneficiaries** if by doing so, they infringe upon the constitutional rights of others. In this case, TLO logging or the selling of this parcel to a developer will increase the risks²⁸ to lives and property as well as to those transiting along State Highway #7 (Mitkof Highway). Should the State Attorney General be defending the TLO or AMHTA *against* the State Constitution if they violate the rights of others protected by the Constitution?

I do not claim to know the particulars of the litigation that we are facing, but it does seem to me that the actions of the TLO and AMHTA with regard to their Petersburg Mitkof Highway hillside parcel have placed the Trust corpus²⁹ in the most perilous position since its inception.

By writing this letter to you, I am in no way attempting to cause embarrassment to you. I intend to try to keep its dissemination to an appropriate audience. I do intend to see that Dr. Swanston receives a copy. Dr. Swanston and his risk analysis³⁰ were insulted and maligned by the TLO's contracted geologist. Dr. Swanston's professional critique³¹ of this geologist's contracted report refrained from any public or personal display of this geologist's capabilities and focused solely upon the scientific content. I believe Dr. Swanston may realize a certain degree of vindication to see this geologist and his report finally beginning to get the exposure they deserve.

Society depends upon accuracy and truthfulness, competence and integrity by professional geologists and engineers. Their schooling and training set a high standard that is expected to guide and enable these professionals in their duties, but cannot truly affect a person's ethics, or character.

As one of this geologist's peers stated in discussion, *"At best, geologic features that should have been identified in the field were missed. This demonstrates incompetence and*

²⁸ The MHHA has accumulated an extensive library of historical and scientific evidence that the TLO plans to log or sell this parcel to a developer will increase the threat to *public safety* due to increased soil mass wasting. It will also be argued that as a public agency, neither the TLO nor the AMHTA can pass those risks that they now know are real on to a private entity with the intention of development (e.g., logging).

²⁹ *"Protect The Trust corpus"*, **2006 Annual Report – You KNOW us . . .; General Background**, The Trust/The Alaska Mental Health Trust Authority, p. 10.

³⁰ *Assessment of Landslide Risk to the Urban Corridor Along Mitkof Highway from Planned Logging of Mental Health Trust Lands* by Douglas N. Swanston, Ph.D., CPG (June 2006).

³¹ *Critique of: "Geotechnical Forestry Practices Evaluation Petersburg Slope Stability Assessment Petersburg, Alaska File Number 5342-004-00* by Dr. Douglas N. Swanston (30 August 2006).

negligence on the part of the consulting CEG [Certified Engineering Geologist]. The results are misleading and dangerous to public safety."³²

*"At worst, geologic information observed in the field was withheld from evaluation and/or ignored. This is fraudulent, misleading to the employer (logging company), and demonstrates a blatant disregard to public safety."*³³

Ignoring the findings of this geologist's peers in California, or attempting to downplay their significance, will only further widen the breach of the public trust that has already occurred.

The MHHA, City of Petersburg, Governor Sarah Palin, Senator Lisa Murkowski, Tongass National Forest Supervisor Forrest Cole, and SEACC Executive Director Russell Heath have offered to assist in a land exchange. There has been enough time (18 months) and money (\$95,000 by the homeowners and an unknown amount by the TLO) expended on this project with inherent risks and liabilities that will never go away. The solution is in hand. The TLO and the AMHTA are continuing to force the MHHA into litigation where the Trust corpus will, in all likelihood, face a constitutional crisis, and an uncertain future.

MITKOF HIGHWAY HOMEOWNERS ASSOCIATION

/s/ Charles E. Wood

Charles E. "Ed" Wood, Co-Founder

cc: Douglas N. Swanston, Ph.D., CPG
Kristen Pettersen, Esq., Dillon & Findley

³² David L. Longstreth, CEG 2068, Department of Conservation/Division of Mines and Geology/State of California; Memorandum to Thomas E. Spittler, SEG, Department of Conservation/Division of Mines and Geology; ISSUE: Misleading geologic evaluation of Timber Harvesting Plan 1-01-177 MEN; pg. 2 (3 July 2001).

³³ David L. Longstreth, CEG 2068, Department of Conservation/Division of Mines and Geology/State of California; Memorandum to Thomas E. Spittler, SEG, Department of Conservation/Division of Mines and Geology; ISSUE: Misleading geologic evaluation of Timber Harvesting Plan 1-01-177 MEN; pg. 3, (3 July 2001).

August 30, 2006

Attachment 4

Critique of: “Geotechnical Forestry Practices Evaluation Petersburg Slope Stability Assessment Petersburg, Alaska File Number 5342-004-00”

**By
Dr. Douglas N. Swanston**

General Review Comments

This report provides an adequate discussion of the geologic setting and a reasonable assessment of geomorphic features and conditions relevant to the unstable nature of the slopes adjacent to Mitkof Highway from Scow Bay to the Twin Creeks valley. The report conclusions on the overall instability of these slopes and the location of hazardous sites and potential transport corridors are essentially the same as those developed in the report: “Assessment of Landslide Risk to the Urban Corridor along Mitkof Highway from Planned Logging on Mental Health Trust Lands” and strongly support the designation of these slopes as “high risk” for initiation and acceleration of landslide processes capable of reaching and crossing Mitkof Highway.

Unfortunately, the focus of the report is primarily on logging and ways to limit the destabilizing effects of timber removal on the upper slopes rather than the real danger of downslope debris flow and debris torrent impacts on life and property along the Mitkof Highway corridor resulting from logging disturbance. The general concerns of the City of Petersburg and residents along the Highway were noted but minimal analysis and assessment of effects of proposed logging on public safety and water supply were provided. The authors have failed to recognize or address the importance of the climatic and terrain conditions that prevail throughout much of southeast Alaska and particularly in the area of concern (shallow cohesionless soils, steep gradients, strong winds, high rainfall, rapid snowmelt), as they influence the magnitude and frequency of these dominant slope erosion processes above Mitkof Highway. There is a wealth of information on controlling variables and the adverse impacts of logging on slope stability in southeast Alaska and along the North Pacific Coast in professional journals and in USFS Alaska Region and research publications.

There is undue emphasis on effectiveness of helicopter yarding and limited tree removal on maintenance of stability at these steep slope sites. While helicopter yarding and selective harvest are less damaging than clear cutting and high-lead cable yarding, there is still a high probability of significant disturbance and damage to sensitive slope conditions. The inherent stability of colluvial and residual soils on steep glaciated slopes in coastal Alaska is determined by, and controlled by, the angle of internal friction of the soil. Overburden soils on slopes at or above their angle of internal friction (approx. 34° to 36°), are in a state of incipient failure and are maintained in place largely by external variables such as: 1) the anchoring and reinforcing effects of tree roots in underlying bedrock and compact till, 2) the tying together of lateral roots from tree to tree across the slope, 3) the buttressing effect of massive lateral and sinker roots

developed on the downslope and leeward side of trees to resist overturning due to wind forces and the pull of gravity and 4) by the surface roughness and minor benching in the underlying bedrock. Such forested slopes are in delicate equilibrium with the various natural forces acting on them and are highly susceptible to any disturbance likely to upset that equilibrium such as earthquake, windthrow, high intensity-long duration storms, rapid snowmelt and logging. Trees protected by surrounding trees do not develop significant buttress roots to resist wind loading and when exposed by even limited tree removal are highly susceptible to wind throw and its associated disturbance and destruction of the anchoring and reinforcing root network. The effects of even limited timber harvest on slopes above the angle of internal friction or in “sensitive” areas of concentrated subsurface drainage (such as seepage zones on the open slope and broad shallow liner depressions or “swales” leading to established drainages) are highly likely to result in development of debris avalanches and debris flows. Without adequate training and experience, it is unlikely that the logging contractor can consistently recognize and avoid such “sensitive” areas. Because of the natural variability in local gradient and subsurface drainage, even the most experienced geologist or “geotechnical professional” would be hard pressed to identify and recognize all of the critical sites necessary to guarantee that no landslides or subsequent debris torrents will occur as the result of the planned logging disturbance.

There is undue emphasis on the presence of bedrock benches to reduce the potential for landslides to extend downslope. I agree that small debris avalanches (i.e. less than about 100 cubic yards) with low water content and traveling short distances (i.e. 100 feet or less) are likely to deposit at or just below an intervening bedrock bench. If the failure volume is great enough (i.e. 200 cubic yards or more), the material is saturated and the runout is great enough (i.e. more than about 200 feet) then the momentum of the mass will carry it over the bench at the point of impact or divert it, with substantial momentum remaining, into linear gullies and depressions downslope. Also, as the report notes, these benches do not extend into confined channels where damaging debris flows and debris torrents are transported to the highway.

The report has seriously underestimated the significance of the numerous active and dormant debris flow and debris torrent channels that reach the highway. Large portions of the slopes above Mitkof Highway are either actively unstable or are in a delicate state of equilibrium balance between forces acting to cause a landslide and forces acting to resist a landslide. Slope gradients are steep, soils are coarse grained and shallow and there are numerous swales and zones of seepage where ground water is concentrated, particularly during high-intensity storms and rapid snowmelt. In addition, the slopes are dissected by a number of steep-gradient, incised gullies that extend to the highway and whose drainage areas encompass most of the unstable slope portions. During high-intensity, long-duration storms and/or rapid snowmelt which frequently occur in this area, the entire drainage area of each of these gullies, and not just the “headwater areas” as defined in this report, are source areas for landslide debris which can either: 1) pass through the channel system immediately as debris flows or debris torrents, or 2) lodge temporarily in the gully forming a debris dam that can accumulate additional material over time ultimately failing and producing an even larger and more destructive debris torrent.

The report provides minimal analysis of downslope effects, no constructive suggestions on reducing these effects and only limited recommendations to avoid the adverse impacts of logging on the steep slopes above Mitkof Highway. Application of certain Alaska State Forestry Best Management Practice BMPs and several additional suggestions are made by the authors. These are minimal recommendations and are entirely inadequate to seriously limit landslide activity. Most are designed to reduce channel disturbance and limit impact to streams. Of the State Forestry Practices Act BMPs recommended, only the fifth one addresses unstable terrain in a minimal way. Of the additional BMPs recommended, only the first item addresses unstable ground and recommends a 30 foot leave-strip of timber around sensitive areas. This is a questionable recommendation since it opens up the leave-strip to extensive disturbance by windthrow.

Logging disturbance of any sort along the steep, unstable slopes above Mitkof Highway, particularly on slopes that drain into the gullies and channels reaching the highway, is **extremely reckless and irresponsible** above such an important transportation corridor and an area of known permanent occupation and planned urban expansion. **The risk is simply too high** considering the demonstrated unstable conditions along the slopes, the presence of numerous active and dormant debris torrent channels reaching the highway and the clear and demonstrated danger to the utility corridor and residents along the highway.

In the last section of the report, the authors make the following statement that defines one of the principal reasons for not logging above the highway and essentially summarizes the concerns of MHHA members and the City of Petersburg: *“However, all management activities on slopes involve risk, only part of which can be mitigated through qualified geologic, engineering and forestry practices. Favorable performance of slopes in the near term does not imply a certainty of long-term performance, especially under conditions of adverse weather or seismic activity”*.

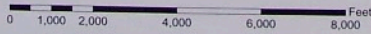
The GeoEngineers report clearly does not guarantee that disturbance by helicopter logging or any other logging method can or will prevent accelerated landslide activity and associated damage and potential loss of life along Mitkof Highway.



This map is the property of
**MITKOF
HIGHWAY
HOMEOWNERS
ASSOCIATION**

Legend

- Landslide Hazard Soils
- Tongass NF
- Previous Timber Harvest
- Streams
- section arc



MHHA Legend

- Mental Health Trust - parcel clear out*
- Mental Health Trust - parcel boundary
- Existing Homes - Mikof corridor
- Existing Mobile Home Parks - Mikof corridor
- Existing Businesses - Mikof Highway
- Future New Homes - Mikof Highway
- Future City Power Plant - Mikof Highway
- Slides/Mikof Highway - surveyed/filmed*
- Uphill Slides - surveyed/filmed*
- Uphill Slides - need survey/filming*

Mental Health Trust - parcel clear out
Mental Health Trust - parcel boundary
Slides/Mikof Highway - surveyed/filmed
Uphill Slides - surveyed/filmed
Uphill Slides - need survey/filming

**SCOPING MAP
Public Safety &
Landslide Hazards
Miktof Island Area**

Land Manager

- USFS
- USFS - Natural Land Cover
- State of Alaska
- Mental Health Lands Trust
- University of Alaska
- ANCSA Corporation
- Private/Local Government

- USFS Documented Landslides (point)
- USFS Documented Landslides (polygon)

Analysis Road

Other Forest Roads

50% - 67% Slope

67%+ Slope

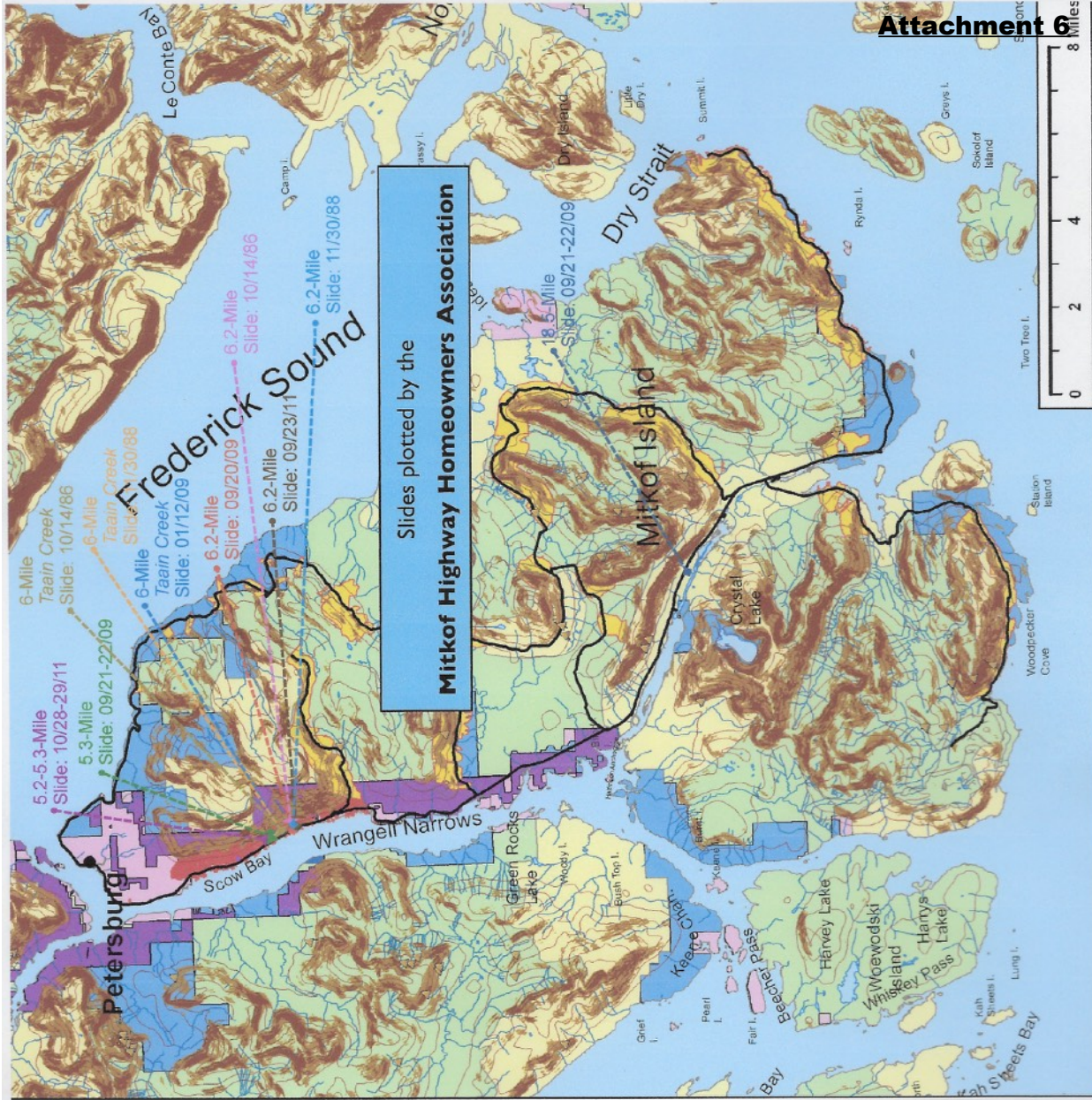
Areas with public roads that are within a 1/2-mile downhill from slopes >50% that have forests that are open to commercial harvesting

Areas with public roads and residential or commercial buildings that are within a 1/2-mile downhill from slopes >50% that have forests that are open to commercial harvesting

Land Status - Assembled from data provided by the Tongass National Forest and the Alaska Dept of Natural Resources (2007). Additional land management information was drawn from the USGS Protected Area Database for Alaska (2006).

Roads - Assembled from the Alaska Division of Forest Resources and the National Forest Road Inventory. Roads included for this map to public safety were those with a TNF Management Objective of 3 (suitable for passenger cars) or higher, with additional roads identified by the Lancelotti ST&C.

Slopes - Calculated using the 20 meter Digital Elevation Model developed by NASA Shuttle Radar Topography Mission (SRTM), 2000.



WORK DRAFT

WORK DRAFT

WORK DRAFT

27-LS0352\M
Bullock
2/16/11

CS FOR HOUSE BILL NO. 91()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PEGGY WILSON

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the regulatory and administrative standards for managing forest**
2 **resources."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 41.17.060(b) is amended to read:

5 (b) With respect to state, municipal, and private forest land, the following
6 standards apply:

7 (1) to the maximum extent possible, all applicable data and
8 information of applicable disciplines shall be updated and used in making decisions
9 relative to the management of forest resources;

10 (2) environmentally sensitive areas shall be recognized in the
11 development of regulations and best management practices that are designed to
12 implement nonpoint source pollution control measures authorized under this chapter;

13 (3) administration of forest land shall consider marketing conditions
14 and other economic constraints affecting the forest landowner, timber owner, or the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

operator;

(4) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land; if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price in the state;

[AND]

(5) significant adverse effects of soil erosion and mass wasting on water quality and fish habitat shall be prevented or minimized;

(6) threats to public safety within one-half mile of a public road or adjacent to an area of human habitation shall be prevented or minimized;

(7) timber harvest and logging operations in or near an area of human habitation shall be subject to appropriate safety standards to protect human life and property on slopes of greater than 45 percent grade or 24 degree slope angle; when establishing appropriate safety standards, the commissioner and the board shall consider factors affecting slope stability and risks to public safety, including

(A) soil types, particularly those with low or minimal cohesion, coarse textures and high permeabilities underlain by relatively impervious substrata that inhibit or stop vertical water movement through shallow overburden;

(B) ground disturbance and logging debris accumulations that may cause local slumping or formation of debris dams in existing gullies and shallow drainage channels;

(C) destruction or reduction of stabilizing root systems;

(D) increased potential for uprooting and overthrowing trees by wind because of increased wind exposure resulting from timber harvest or logging operations;

(E) the likelihood of higher groundwater levels and soil saturation from rainfall and snowmelt on slopes due to canopy removal and the uprooting and overthrowing of trees because of increased wind exposure;

1
2
3
4
5
6
7
8

(F) the presence of active and dormant debris flow and debris torrent channels within a proposed harvest area; and

(G) the need for or the benefit from a site-specific risk analysis; and

(8) the state forester shall give public notice to affected property owners and local governing bodies of potential hazards of timber harvest and logging operations that are subject to safety standards under (7) of this subsection.

MITKOF HIGHWAY HOMEOWNERS ASSOCIATION

P.O. Box 383 • Petersburg, AK 99833 • 907-772-3480

Attachment 8

28 February 2012

Chris Maisch, State Forester & Director
Alaska Division of Forestry
Department of Natural Resources
550 West 7th Avenue, Suite 1450
Anchorage, AK 99501-3566

CERTIFIED MAIL/RETURN RECEIPT

7007 0710 0000 2449 8304

Dan Sullivan, Commissioner
Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501

CERTIFIED MAIL/RETURN RECEIPT

7007 0710 0000 2449 8311

Governor Sean Parnell
State Capitol Building
P.O. Box 110001
Juneau, AK 99811-0001

CERTIFIED MAIL/RETURN RECEIPT

7007 0710 0000 2449 8243

Dear Chris, Commissioner Sullivan, and Governor Parnell,

I will be out of town during the 20-21 March 2012 Board of Forestry (Board) meeting. In lieu of my planned participation, by teleconference, I have a number of questions including: “Do you, Chris, Commissioner Sullivan, and Governor Parnell plan to support or oppose House Bill 91, sponsored by Representative Peggy Wilson?”

We believe that HB 91 is reasonable, logical, and necessary to protect human life and property in Alaska’s inhabited forested landslide hazard areas. The Department of Natural Resources (DNR) has the ability to adopt regulations on this issue but elected to see the Board process through. Now that the Board has completed its “advisory process”, we ask for your support of HB 91.

HB 91 is intended to give the Division of Forestry (DOF) the statutory authority to address *public safety* issues pertaining to logging on unstable slopes within Alaska’s inhabited forested areas. HB 91 is intended to prevent or reduce landslide activity by mandating “strict safety standards to protect human life and property”, and includes certain criteria for

consideration before timber harvest. Because both the DOF and the Board have chosen not to adopt a *public safety* statute, but in essence allowed others to do so, HB 91 is citizen-generated legislation. The intent of HB 91 is to be “consistent with the public interest”, and “for the maximum benefit of its people”, as mandated by the Alaska Constitution. HB 91 also conforms with the Governor’s newly proposed DNR mission statement, except that HB 91 does away with any implied “benefit” and instead specifically identifies *public safety* as the highest priority, i.e., “benefit” in forestry related activity within Alaska’s inhabited landslide hazard areas. After all, doesn’t our Constitution³⁴ mandate that the State protect the common good, and ensure that we, as citizens, have the right to insist on this protection from the State when the State fails to act on our behalf?

The Board of Forestry’s 4 May 2011 “2010 Annual Report to the Governor” states on Page 6,

“It [Forest Resources and Practice Act (FRPA)] is not the best vehicle for addressing safety issues that affect property rights between neighboring private landowners.”

The issue of *public safety* and timber harvest on steep unstable slopes in inhabited areas in Alaska has nothing to do with “property rights”, rather it has everything to do with regulating timber harvest on State, municipal, and private property which falls under the purview of the FRPA. Our original 10 September 2007 “Proposed Alaska Forest Resources and Practices Act Amendment” was intended as a preventive measure and was a direct quote from one of the Department of Natural Resources’ (DNR) own documents³⁵, which specifically states:

“Activities that increase susceptibility to slope failures (such as logging) should be prohibited or restricted if slope failures pose a danger to life or property.”

How that could be misconstrued by the Board in its letter to the Governor as being a dispute between “neighboring private landowners” is beyond belief when it clearly shows that the intent of our amendment was specifically directed at forestry operations on steep unstable slopes in inhabited areas, which should be controlled by the FRPA.

Can it be possible for the State to retain any semblance of credibility with its populace when the FRPA has soil erosion protections for fish habitat and water quality in AS 41.17.060(b) (5), and in turn has resisted any additional protections for humans through the lack of statutory authority, even though citizens have repeatedly asked for safeguards since 10 September 2007?

³⁴ Article 1, Section 2 - “All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”; The Constitution of Alaska - Fiftieth Anniversary Edition (June 2007).

³⁵ State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys; Alaska Report Investigations 83-17, GEOLOGIC HAZARDS IN SOUTHEASTERN ALASKA: AN OVERVIEW by R.A. Combellick and W.E. Long, pp. 7-9 (July 1983).

The “draft” Board meeting agenda for 20-21 March 2012 includes “HB 91-FRPA and Public Safety”. The Board has on at least two occasions nearly voted to recommend that Commissioner Sullivan formally oppose a *public safety* amendment to the FRPA, only to table the issue at the last minute. Additionally, on two other occasions, the Board, after 4-1/2 years of discussion of *public safety*, twice voted by unanimous consent to pass off to local zoning ordinances the State’s obligation and authority to manage timber harvests within Alaska’s inhabited landslide hazard areas. Is this unanimous consent recommendation by the Board supposed to relieve the State of its primary duty of protecting its people? Hasn’t the Board itself made further Board discussion of this issue irrelevant?

Governor Parnell recently proposed the adoption of a revised DNR mission statement: “To responsibly develop Alaska’s resources by making them available for maximum use and benefit consistent with the public interest.”

and was quoted in the *Anchorage Daily News* stating, “It comes straight out of the Alaska Constitution. It is Article VIII, Section 1³⁶, of the constitution.³⁷”

Consider, then, that **the State with its constitutionally mandated policy** (Article VIII, Section 1), primarily through DNR, **encouraged settlement in landslide hazard areas within the boundaries of at least 12 communities or boroughs between Ketchikan and Cordova**³⁸. This policy is ongoing today, and will result in urban expansion in these areas over time. Did the Federal and State governments not recognize these areas as being hazardous at the time of selling homesite parcels to unsuspecting citizens? The Board’s Landslide Science & Technical Committee (S&TC) has issued “Public Safety & Landslide Hazards - Scoping Maps”³⁹ which clearly identify inhabited landslide hazard areas⁴⁰. Likewise, GIS-generated soils mapping has also confirmed landslide hazards soils throughout the region supporting the S&TC findings.

The second part of Article VIII, Section 1 continues

³⁶ Article VIII, Section 1: “It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest”; The Constitution of the State of Alaska - Fiftieth Anniversary Edition (June 2007).

³⁷ “Parnell backs change in DNR mission statement”, Anchorage Daily News (4 February 2012).

³⁸ Alaska Board of Forestry, “FRPA Landslide Science & Technical Committee - Update on Scoping of Landslide Hazards in Potential Timber Harvest Areas”; Slide 7: Affected municipalities and communities - Hazard in boundary: City & Borough of Wrangell, Haines Borough, Ketchikan Gateway Borough, Cordova, City of Ketchikan, Petersburg, Craig, Coffman Cove, Thorne Bay, Kasaan, Hollis and Whale Pass (7 October 2009).

³⁹ Alaska Board of Forestry’s Landslide Science & Technical Committee Scoping Maps, v.4 (2007) to v.8 (2011).

⁴⁰ Alaska Board of Forestry’s Landslide Science & Technical Committee - “Scoping Map - Public Safety & Landslide Hazards - :Areas with public roads and residential or commercial buildings that are within a 1/2-mile downhill from slopes >50% that have forests that are open to commercial harvesting.” v.7 (2010) to v.8 (2011).

“Statement of Policy: It is the policy of the state to encourage [the settlement of its land and] the development of its resources by making them available for maximum use consistent with the public interest.”

Question: Doesn't the State violate this section of the Constitution (as well as the Governor's proposed mission statement for DNR) when it first encourages "settlement" at the base of unstable slopes in landslide hazard areas, then later intentionally cedes its authority to regulate potentially destabilizing timber harvests above these "settlements" to local zoning ordinances? Doesn't the State have an obligation to avoid harm to its citizens, and therefore, cannot develop the resource in the "maximum use consistent with the public interest" if, in so doing, it puts the public in harm's way? Without consideration of *public safety*, how is developing the resource "for the maximum benefit of its people", as laid out in Article VIII, Section 2⁴¹, possible?

For example, in Petersburg, DNR owned the unstable hillside parcels above our homes and Mitkof Highway, which were mapped in 1982 by the US Forest Service as "landslide hazard areas"⁴². Some DNR homesites in this area were even made available with a "Veterans Preference" that rewarded Alaska Veterans' service to country by selling them parcels in a landslide hazard area. DNR quitclaim deeded its unstable Mitkof Highway hillside parcels on 20 September 1996 to the Trust Land Office (TLO). The TLO's 7 December 2005 "Best Interest Decision MHT 9100411 Negotiated Timber Sale, Petersburg Area, Alaska" sited timber harvest as the "highest and best use" for these parcels. **DNR had to know, or should have known when it transferred these parcels that they were located in an inhabited and inherently unstable area with a history of landslides, and that they were intended to be logged even though the Division of Forestry (DOF) had no authority to address *public safety* in its forest practices.** It is logical to assume that similar land transfers or sales occurred in other affected communities.

Logging in identified inhabited landslide hazard areas, which most likely will further destabilize these areas if done without strict State regulations, is not "consistent with the public interest", nor is it somehow a "benefit". Neither is having the DOF standing by and "hoping"⁴³ for the best, while local zoning ordinances are enacted by people who may or may not possess the expertise which the public expects from State foresters and State soils experts.

⁴¹ Article VIII, Section 2: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.;" The Constitution of Alaska - Fiftieth Anniversary Edition (June 2007).

⁴² "Hazard Profiles - Landslide Hazard Areas" (1982). Source: "US Forest Service Unpublished Data (City of Petersburg, Comprehensive Plan & Coastal Management Program 1982)".

⁴³ Alaska Division of Forestry Minutes - 2011 November 29-30 DRAFT, Page 16: "Maisch commented that there is a risk for operating on a steep slope, and that is also a financial decision. Different landowners accept different levels of risk. We hope liability deters bad decisions."

To date, Chris, you are the only State Forester on the Pacific Coast north of the U.S.-Mexico border without the authority to address *public safety* within inhabited areas in your Forest Resources and Practices Act. While this may make Alaska unique, it also unnecessarily jeopardizes those who in good faith bought land and unknowingly settled in landslide hazard areas with the blessing of the State and Federal governments. Alaska's forestry related landslides would not be an issue had not the State made it a policy within its Constitution to encourage settlement in what later proved to be unstable areas. It is long past time for the State to adopt legislation on this issue, and insure that the "health and the welfare^{44,45}" of Alaskans and their communities are protected. The simple fact that the DOF cannot address *public safety* by statute as a preventive measure as related to timber harvest on unstable slopes in inhabited areas has cost the Mitkof Highway Homeowners Association over six years out of our lives, and more than \$127,000.

Representative Wilson's 4 August 2008 letter to you, Chris, and the Forestry Board Members included:

"Other states have looked at this issue and taken steps to ensure safety both to the environment and to homeowners and their property. As a Legislator, and also personally, I deem public safety to be a top priority in Alaska. I am optimistic that the Division of Forestry is willing to move toward this goal and at the same time provide good management practices throughout the state."

Considering that this issue started in December 2005 with our telephone call to DOF in Ketchikan concerning timber harvest on unstable slopes above our homes, the question still remains whether the State will assume its responsibility to safeguard Alaska communities, or will it instead expect others to shoulder its burden through "local zoning ordinances"?

On a fiduciary note, wouldn't the amount of time that has elapsed since citizens asked for statutory provisions to the FRPA to safeguard their homes from timber harvest related landslide activity, substantially increase the State's liability if human life and property were harmed because DNR failed to adequately address *public safety*?

I know, many questions, but we believe our concerns are legitimate. While the S&TC found the inhabited landslide hazard areas in its scoping study to represent a small fraction of the

⁴⁴ Article VII, Section 4: "The legislature shall provide for the promotion and protection of public health.;" The Constitution of Alaska - Fiftieth Anniversary Edition (June 2007).

⁴⁵ Article VII, Section 5: "The legislature shall provide for public welfare.;" The Constitution of Alaska - Fiftieth Anniversary Edition (June 2007).

timber base⁴⁶, they are of huge importance to those of us who live and transit in them. In the final analyses, people can only build homes and raise families where land is made available to them for settlement.

There are many State and Federal regulations designed to prevent or reduce accidents or foreseeable harmful incidents. That is the intent of HB 91. Chris, if you, Commissioner Sullivan, and Governor Parnell decide to support Representative Wilson and HB 91, I can be reached at 907-772-3480 (home) or 907-518-0480 (cell).

MITKOF HIGHWAY HOMEOWNERS ASSOCIATION

/s/

Charles E. "Ed" Wood, Co-Founder

cc: Mayor Al Dwyer, Petersburg
Stephen Giesbrecht, Petersburg City Manager
Michael Geraghty, Attorney General
State Representative Peggy Wilson
State Senator Bert Stedman
Douglas N. Swanston, Ph.D., CPG
Larry Mayo, U.S. Geological Survey (Ret.)
Matt Lichtenstein/Joe Viechnicki, KFSK-FM Public Radio
Ron Loesch, Petersburg Pilot
Kristen Miller, Esq., Dillon & Findley, P.C

⁴⁶ Piechart - "Harvest status of land in analysis area (29.4 MMac in SE Alaska from Yakutat south; does not include Cordova): (a) Open to harvest within 1/2-mi of public road and in hazard zone = 51.7 Mac (0.2%); (b) Hazard zones adjacent to populated areas = 7.6 Mac (0.03%)." Alaska Division of Forestry, Board of Forestry's Landslide Science & Technical Committee, "Update on Scoping of Landslide Hazards in Potential Timber Harvest Areas", p. 10 (7 October 2009).