


Haines Borough
Borough Assembly Meeting #254
AGENDA

September 24, 2013 - 6:30 p.m.

Location: Assembly Chambers, Public Safety Bldg.

Stephanie Scott,
Mayor

Dave Berry Jr.,
Assembly Member

Steve Vick,
Assembly Member

Debra Schnabel,
Assembly Member

Joanne Waterman,
Assembly Member

Norman Smith,
Assembly Member

Jerry Lapp,
Assembly Member

Mark Earnest,
Borough Manager

Julie Cozzi,
Borough Clerk

Michelle Webb,
Deputy Clerk

1. **CALL TO ORDER/PLEDGE TO THE FLAG**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA & CONSENT AGENDA**

[The following Consent Agenda items are indicated by an asterisk () and will be enacted by the motion to approve the agenda. There will be no separate discussion of these items unless an assembly member or other person so requests, in which event the asterisk will be removed and that item will be considered by the assembly on the regular agenda.]*

Consent Agenda:

- 4 – Approve Assembly Meeting Minutes
- 8B – Fire Department Report
- 8C – Chilkat Center Facility Report
- 9A – Planning Commission Minutes
- 11A1 – Adoption of Resolution 13-09-498
- 11A2 – Adoption of Resolution 13-09-499
- 11B1 – Introduction of Ordinance 13-09-349
- 11B2 – Introduction of Ordinance 13-09-350
- 11B3 – Introduction of Ordinance 13-09-351

- * 4. **APPROVAL OF MINUTES** – September 10 Regular
5. **PUBLIC COMMENTS** [Any topics not scheduled for public hearing]
6. **MAYOR'S COMMENTS/REPORT**
7. **PUBLIC HEARINGS**
 - A. **Ordinance 13-08-341** – Third Hearing
An Ordinance of the Haines Borough amending Borough Code Section 18.90.060(I) to add a size limitation for small informational signs.
*This is recommended by the planning commission and was introduced on 8/13. Public hearings were held on 8/27 and 9/10. The planning commission will provide additional information. **Motion:** Adopt Ordinance 13-08-341.*
 - B. **Ordinance 13-08-342** – Third Hearing
An Ordinance of the Haines Borough amending Borough Code Section 18.60.010(I) to remove the requirement for a wastewater disposal system to be inspected every two years by the Alaska Department of Environmental Conservation.
*This is recommended by the planning commission and was introduced on 8/13. Public hearings were held on 8/27 and 9/10. The planning commission will provide additional information. **Motion:** Adopt Ordinance 13-08-342.*
 - C. **Ordinance 13-08-343** – Third Hearing
An Ordinance of the Haines Borough amending Borough Code Section 18.80.030(B) to add setback regulations to the General Use Zone.
*This is recommended by the planning commission and was introduced on 8/13. Public hearings were held on 8/27 and 9/10. The planning commission will provide additional information. **Motion:** Adopt Ordinance 13-08-343.*
 - D. **Ordinance 13-08-347** – Second Hearing
An Ordinance of the Haines Borough amending Haines Borough Code Chapter 2.72.080 to specify what categories of personnel records are available to the public.
*This is recommended by the borough manager and was introduced on 8/13. After the first public hearing on 8/27, the ordinance was referred to the personnel committee who met on 9/9. The committee recommends some amendments, and the borough attorney drafted a substitute ordinance for consideration. On 9/10, the assembly scheduled the second public hearing. **Motion:** Adopt Ordinance 13-08-347.*

7. PUBLIC HEARINGS ---continued---

E. **Ordinance 13-08-348** – Second Hearing

An Ordinance of the Haines Borough amending the Port of Haines Terminal Tariff No. 3 to adjust water rates at Haines port facilities, adjust dockage rates at the Port Chilkoot Dock, add logs to the wharfage rates, and move text from one tariff page to another.

*On 9/11/12, the assembly adopted an ordinance revising the water-sewer rates including an increase to the commercial bulk water rate. The port tariff must be revised to provide for that rate change, and the assembly authorizes tariff revisions by non-code ordinance. Additionally, the port and harbor advisory committee met jointly with the tourism advisory board on 10/11/12 to discuss possible increases to the PC Dock dockage rates, and they recommend incremental increases. On 10/23/12, a draft tariff amendment ordinance was referred to the finance committee. Since that time, staff has drafted a new ordinance essentially the same but with the addition of a wharfage rate for logs at Lutak Dock. The assembly is asked to, once again, consider these amendments, and this ordinance was introduced on 8/27 and had a first public hearing on 9/10. **Motion:** Adopt Ordinance 13-08-348.*

8. STAFF/FACILITY REPORTS

- A. **Borough Manager** – 9/24/13 Report
- *B. **Fire Department** – Staff Report of August 2013
- *C. **Chilkat Center** – Facility Report of August 2013
- D. **Ports and Harbors Department** – Harbormaster Report re. Boat Haul-Out

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

- *A. **Planning Commission** – Minutes of 8/8/13
- B. **Assembly Standing Committee Reports**

10. UNFINISHED BUSINESS

A. **Ordinance 13-08-344**

An Ordinance of the Haines Borough amending Borough Code Section 18.20.020 to define temporary use dwellings.

*This is recommended by the planning commission and was introduced on 8/13. On 8/27, following the first public hearing, the motion to advance it to a second public hearing failed. On 9/10, a motion to reconsider passed followed by a motion to postpone to this meeting. The planning commission will provide additional information. Obviously, a motion to amend to change the date of the public hearing would be in order. **Motion already on the floor:** Advance Ordinance 13-08-344 to a second public hearing on 9/10/13.*

11. NEW BUSINESS

A. Resolutions

*1. **Resolution 13-09-498**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Jettors Northwest in the amount of \$31,065.53 for the purchase and delivery of a sewer jetter.

*This resolution is recommended by the borough manager. **Motion:** Adopt Resolution 13-09-498.*

*2. **Resolution 13-09-499**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Red Truck Sales International, Inc. in the amount of \$85,360 for the purchase and delivery of a Kenworth tanker truck.

*This resolution is recommended by the borough manager. **Motion:** Adopt Resolution 13-09-499.*

B. Ordinances for Introduction

*1. **Ordinance 13-09-349**

An Ordinance of the Haines Borough amending Borough Code Section 18.20.020 to define "vacation rental" and change the definition of "lodge"; and amending Borough Code Sections 18.70.040 and 18.70.030(b & c) to add vacation rental to the Townsite zoning chart, the Mud Bay Planning/Zoning District, and the Lutak Inlet Planning/Zoning District.

*This ordinance is recommended by the planning commission to correct what they believe to be a code deficiency. **Motion:** Introduce Ordinance 13-09-349 and set a first public hearing for 10/8/13.*

11. **NEW BUSINESS** ---continued---

*2. **Ordinance 13-09-350**

An Ordinance of the Haines Borough pursuant to Haines Borough Code Title 14 Section 14.16.160, approving a record of survey and authorizing the execution of an easement grant to Ocean Beauty Seafoods LLC for existing utilities within Alaska State Land Survey 95-35 at Excursion Inlet.

*This ordinance is recommended by the borough manager. The planning commission considered the matter on 9/12 and also recommends it. **Motion:** Introduce Ordinance 13-09-350 and set a first public hearing for 10/8/13.*

C. **Other New Business**

1. **Reconsideration/Veto of Ordinance 13-07-334**

This agenda item was requested by the mayor. She asks for a motion to reconsider the 9/10/13 vote to adopt Ordinance 13-07-334 so it may be amended. Short of that, the mayor plans to exercise her right of veto.

2. **Manager Transition Plan**

This agenda item was requested by the mayor. The manager will provide information at the assembly meeting.

12. **CORRESPONDENCE/REQUESTS**

13. **SET MEETING DATES**

A. **Schedule Election Canvass** – Tuesday, October 8, 6:00 p.m.

14. **PUBLIC COMMENTS**

15. **ANNOUNCEMENTS/ASSEMBLY COMMENTS**

16. **ADJOURNMENT**


Haines Borough
Borough Assembly Meeting #253
September 10, 2013
MINUTES

Draft

1. **CALL TO ORDER/PLEDGE TO THE FLAG:** Deputy Mayor **LAPP** called the meeting to order at 6:30 p.m. in the Assembly Chambers and led the pledge to the flag.

2. **ROLL CALL**

Present: Deputy Mayor Jerry **LAPP**, and other Assembly Members Debra **SCHNABEL**, Norman **SMITH**, Dave **BERRY**, Joanne **WATERMAN**, and Steve **VICK**. Absent: Mayor Stephanie **SCOTT**.

Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Carlos **JIMENEZ**/Director of Public Facilities, Simon **FORD**/Interim Police Chief, Michelle **WEBB**/Deputy Clerk, and Darsie **CULBECK**/Executive Assistant to the Manager

Visitors Present: Karen **GARCIA**/CVN, Margaret **FRIEDENAUER**/KHNS, Fred **EINSPRUCH**, Neil **EINSPRUCH**, Dave **BUTTON**, Bill **KURZ**, Libby **KURZ**, Janet **KURZ**, Jack **WENNER**, Rob **GOLDBERG**, and others.

3. **APPROVAL OF AGENDA & CONSENT AGENDA**

The following Items were on the published consent agenda:

- 4 – Approve Assembly Meeting Minutes
- 8B – Police Department Report
- 9A – Tourism Advisory Board Minutes
- 11A1 – Adoption of Resolution 13-09-493
- 11A2 – Adoption of Resolution 13-09-494
- 11A3 – Adoption of Resolution 13-09-495
- 11A4 – Adoption of Resolution 13-09-496
- 11A5 – Adoption of Resolution 13-09-497
- 11C1 – Committee Appointments
- 11C2 – Haines Rail Access Assessment

Motion: **WATERMAN** moved to “approve the agenda/consent agenda,” and was amended to remove Items 11A2 and 11A3 from the consent agenda. The agenda as amended carried unanimously.

*4. **APPROVAL OF MINUTES** – August 27 Regular

5. **PUBLIC COMMENTS**

EINSPRUCH said the public is having a problem with public records requests and the ability to inspect public records. He believes the public is being denied records, and the manager is inhibiting this. There are numerous delays and also problems with the borough code that allows the manager to delete records at his own discretion. Additionally, there are conflicting sections of borough code.

EINSPRUCH said he requested data on August 6 and still has not received any documents.

BUTTON said the borough is here to help businesses succeed and give them a step up rather than put unnecessary regulations in the way.

6. **MAYOR’S COMMENTS/REPORT**

LAPP said the mayor is in Juneau undergoing tests at Bartlett Hospital and hopes to be home soon.

7. **PUBLIC HEARINGS**

A. **Ordinance 13-07-334** – Third Hearing

An Ordinance of the Haines Borough amending Borough Code Title 2, Section 2.68.510 to change runoff election procedures in cases of candidates receiving less than 40% votes.

Deputy Mayor **LAPP** opened and closed the public hearing at 6:39pm; there were no public comments.

Motion: **BERRY** moved to “adopt Ordinance 13-07-334,” and the motion carried unanimously in a roll call vote. There was no discussion.

B. **Ordinance 13-08-340** – Second Hearing

An Ordinance of the Haines Borough amending Borough Code Section 3.70.030 to extend the application deadline for senior and disabled veterans property tax exemptions and to remove the provision for late applications.

Deputy Mayor **LAPP** opened and closed the public hearing at 6:40pm; there were no public comments.

Motion: **WATERMAN** moved to “adopt Ordinance 13-08-340,” and the motion carried unanimously in a roll call vote.

SCHNABEL clarified the originator of the ordinance was the Finance Committee. It is incorrectly noted in the agenda bill as being from the planning commission. **COZZI** will make that correction. Additionally, she agreed to make sure the ordinance itself has March 31st as the application deadline, as authorized by an amendment on 8/27.

C. **Ordinance 13-08-341** – Second Hearing

An Ordinance of the Haines Borough amending Borough Code Section 18.90.060(I) to add a size limitation for small informational signs.

Deputy Mayor **LAPP** opened the public hearing at 6:44pm.

GOLDBERG explained small informational signs are exempt from sign regulations in borough code. The planning & zoning technician asked for clarification of the size of “small” signs, and the planning commission put forth this ordinance for assembly consideration.

Hearing no further comments, **LAPP** closed the public hearing at 6:45pm.

Motion: **BERRY** moved to “advance Ordinance 13-08-341 to a third public hearing on 9/24/13,” and the motion carried unanimously.

SCHNABEL asked about placement of signs and wondered if there are other regulations that deal with that. **GOLDBERG** responded signs must be located on a business’s premises. There are also regulations regarding small sandwich board signs.

D. **Ordinance 13-08-342** – Second Hearing

An Ordinance of the Haines Borough amending Borough Code Section 18.60.010(I) to remove the requirement for a wastewater disposal system to be inspected every two years by the Alaska Department of Environmental Conservation.

Deputy Mayor **LAPP** opened the public hearing at 6:47pm.

GOLDBERG explained the state is not doing the two-year inspections, and the borough doesn’t have the capacity to do it. Therefore, this requirement should not be in the code if it can’t be enforced. The planning commission put forward this ordinance for that reason.

EINSPRUCH said the borough doesn’t have the reach into state regulations.

Hearing no further comments, **LAPP** closed the public hearing at 6:49pm.

Motion: **WATERMAN** moved to “advance Ordinance 13-08-342 to a third public hearing on 9/24/13,” and the motion carried unanimously. There was no discussion.

E. **Ordinance 13-08-343** – Second Hearing

An Ordinance of the Haines Borough amending Borough Code Section 18.80.030(B) to add setback regulations to the General Use Zone.

Deputy Mayor **LAPP** opened the public hearing at 6:49pm.

GOLDBERG explained this was put forward by the planning commission. Setbacks have been a fundamental part of community planning for several hundred years. As more people have moved into the upper valley and more residential neighborhoods have been created, setbacks can help to avoid conflicts. Something as simple as painting a house can require putting a ladder on a neighbor’s property, and firemen like to have space between buildings. The Townsite, Mud Bay, and Lutak Inlet zoning districts all have setbacks. The planning commission believes it is a good thing for the General Use zone, as well.

EINSPRUCH asked if there is a diagram in the room showing the General Use zone and, when told no, said he doesn’t understand how this ordinance can be considered without it.

Hearing no further comments, the mayor closed the public hearing at 6:53pm.

Motion: **WATERMAN** moved to “advance Ordinance 13-08-343 to a third public hearing on 9/24/13,” and the motion carried 5-1 with **BERRY** opposed.

SCHNABEL spoke against the ordinance. It seems to her that in a General Use zone, once setbacks are introduced, the borough is effectively beginning zoning. She wondered if it would be better to create an industrial zone. A 50-foot setback would by default affect the development of industrial uses. **VICK** said the borough is not zoning it per se by saying this is for that and this is for that. If he has a current industrial use within that area, would he be “grandfathered in?” **EARNEST** said yes. A preexisting building when the setbacks are established would not be required

to be moved. **BERRY** asked what if he planned to expand his business in the future but, in the meantime, a person builds a house next door. Would he be prevented from expanding as planned? **GOLDBERG** said there would be no restriction in expanding a commercial business. However, there is a building separation requirement. With fire marshal approval, it could be closer than 15 feet.

F. Ordinance 13-08-346 – Second Hearing

An Ordinance of the Haines Borough authorizing the borough manager to enter into a loan agreement in the amount of up to \$787,500 with the Alaska Department of Environmental Conservation for the Muncaster Road Asbestos Cement Pipe Replacement project.

Deputy Mayor **LAPP** opened and closed the public hearing at 7:00pm; there were no public comments.

Motion: **BERRY** moved to “adopt Ordinance 13-08-346,” and the motion carried unanimously in a roll call vote.

EARNEST explained the actual loan will be substantially less, because there is a grant that will reduce it. However, the ordinance accepting the loan agreement must state the full \$787,500 amount.

G. Ordinance 13-08-348 – First Hearing

An Ordinance of the Haines Borough amending the Port of Haines Terminal Tariff No. 3 to adjust water rates at Haines port facilities, adjust dockage rates at the Port Chilkoot Dock, add logs to the wharfage rates, and move text from one tariff page to another.

Deputy Mayor **LAPP** opened and closed the public hearing at 7:02pm; there were no public comments.

Motion: **BERRY** moved to “advance Ordinance 13-08-348 to a second public hearing on 9/24/13,” and the motion carried unanimously. There was no discussion.

8. STAFF/FACILITY REPORTS

A. Borough Manager – 9/10/13 Report

EARNEST summarized his written report.

The manager said a strategic plan would be very helpful in the budget process. Also, the borough needs to figure out a way to deal with deferred maintenance and roads. A road plan was being pursued two years ago when the borough received a legislative appropriation. However, that funding source is no longer available, so the road plan is being reevaluated. One idea is to set aside funds annually for road improvements. Chilkoot Indian Association has committed \$350,000 over a two-year period for Third Avenue improvements slated to begin next summer. Add that to the \$50,000 currently in the CIP, and only Third Avenue gets done. There are other roads that need work. If there is only one appropriation made out of the FY15 CIP, he recommends \$250,000 be appropriated for Chilkat Lake roads. FY14 was the year for replacing outdated equipment. Future years should address roads. **SCHNABEL** would like to have a better idea about the manager’s thoughts regarding prioritizing roads. She wondered if LIDs should be developed in various areas in the borough. **EARNEST** said he asked public facilities staff to work on a revised road improvement plan. He also clarified the restrooms at Picture Point will be similar to the ones at the Tanani Bay wayside.

*** B. Police Department – 9/6/13 Report**

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

*** A. Tourism Advisory Board – Minutes of 6/24/13 and 7/22/13**

B. Assembly Standing Committee Reports

WATERMAN reported on the 9/9/13 Personnel Committee meeting to discuss Ordinance 13-08-347. Attorneys John McKay and Brooks Chandler attended by phone. The committee came to an understanding of a good balance. It was a good compromise by all involved. The ideas discussed will be brought forward. There will be a substitute ordinance for consideration that will address the applications and evaluations.

Motion: **WATERMAN** moved to “advance Ordinance 13-08-347 to a second public hearing on 9/24/13,” and the motion carried unanimously.

SCHNABEL asked if the committee discussed formalizing a standardized borough evaluation form. **WATERMAN** said what would be released to the public would be an evaluation summary similar to

what is currently released for the borough manager. It would be an overall look at what happened in the evaluation.

VICK reported the Government Affairs & Services Committee met to discuss the Heliskiing GPS reporting policy and will meet in the future to discuss the map amendment ordinance. He said it was a helpful meeting, and he appreciated the attendance by staff. One suggestion was that the GPS data come directly from the helicopter company, and the data needs to include the date and the air speed. The idea of automating the software came up, as well. The information could be input using filters. The frequency of current checks was also discussed. It was suggested a minimum of five per company per season be done. Some people want more, some less, and five is a compromise. The committee is not yet ready to bring a draft policy forward for assembly consideration.

10. UNFINISHED BUSINESS

11. NEW BUSINESS

A. Resolutions

*** 1. Resolution 13-09-493**

A Resolution of the Haines Borough Assembly appointing election officials for the regular Election to be held October 1, 2013, and establishing the wages.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-09-493."

2. Resolution 13-09-494

A Resolution of the Haines Borough Assembly creating a five-member ad hoc committee to assist in the development of the Picture Point Wayside Project.

Motion: **SCHNABEL** moved to "adopt Resolution 13-09-494," and the motion carried unanimously.

SCHNABEL would like to understand the borough's relationship with ADOT&PF in this project and the available funds. **EARNEST** said this a local effort and ADOT is not involved in the design of this project. Their only involvement would be in a Right of Way permit. **CULBECK** said there was around \$200,000 for the project, and the borough recently received a grant amendment of an additional \$140,000. **SCHNABEL** asked if the administration will bring forward a plan for approval. She wants to make sure there is enough money to make the project everything it should be. **EARNEST** said the design options will come to the assembly. **CULBECK** anticipates the ad hoc committee will meet within the next 30 days.

3. Resolution 13-09-495

A Resolution of the Haines Borough Assembly supporting application for a design and construction grant through the Alaska Energy Authority for installing wood pellet boilers in borough facilities.

Motion: **WATERMAN** moved to "adopt Resolution 13-09-495," and the motion carried unanimously.

SCHNABEL said this is a loan so she would like to know the borough's obligations. **EARNEST** clarified it is actually a grant. **SMITH** asked how much money is available. **EARNEST** said that is not yet known. This is an application for funds through round 7 of the state's alternative energy program. **CULBECK** added the application is due on the 23rd of this month. **SMITH** asked what buildings are being considered. **CULBECK** said a few years ago, the borough was funded for a wood heat feasibility study. That report will be available soon and it will show which buildings would be most cost effective for conversion. It will likely be all buildings that burn over 3,000 gallons of fuel per year.

***4. Resolution 13-09-496**

A Resolution of the Haines Borough Assembly supporting a feasibility grant application through the Alaska Energy Authority Round VII Renewable Energy Fund for hydroelectric power in Excursion Inlet.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-09-496."

***5. Resolution 13-09-497**

A Resolution of the Haines Borough Assembly authorizing a renewed "sister city" relationship with the town of Dunbar, Scotland, to recognize a mutual association with John Muir.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-09-497."

B. Ordinances for Introduction - None

C. Other New Business

***1. Committee Appointments**

Note: with the adoption of Resolution 13-09-494 creating a five-member ad hoc committee to assist in the development of the Picture Point Wayside project, members were identified and assembly confirmation requested. The motion adopted by approval of the consent agenda: "confirm the appointments of Brad Ryan (Takshanuk Watershed Council), Rob Goldberg (Planning Commission), Barbara Mulford (Chamber of Commerce), Judy Heinmiller (Tourism Advisory Board), and John Hirsh (Parks & Recreation Advisory Committee) to the Picture Point Wayside Project ad hoc Committee."

***2. Haines Rail Access Assessment**

The motion adopted by approval of the consent agenda: "direct the Manager to negotiate: (1) a grant agreement with the Alaska Department of Transportation and Public Facilities for the purpose of conducting a Preliminary Assessment for Rail Access to the Port of Haines; and (2) a sole source contract with ALCAN RaiLink/PROLOG Canada to perform said work."

12. CORRESPONDENCE/REQUESTS - None

13. SET MEETING DATES

A. Government Affairs & Services Committee – Friday, 9/20, 5pm – Topic: Review of Ordinance 13-07-339 to revise the commercial ski tour area map amendment process.

B. Personnel Committee – Monday, 9/16, 11am

14. PUBLIC COMMENTS

GOLDBERG addressed ordinance 13-07-344 that failed on 8/27 to be advanced to a second public hearing. He said recreational vehicles (RVs) are prohibited from being used as a permanent residence. A permit is required to use an RV as a temporary residence. The planning commission wanted to clarify the code regarding temporary dwellings. This was not an effort to ban yurts, and the ordinance only applied to the townsite service area. Right now, a residence requires a permanent foundation. As the code currently reads, you can put down 4 concrete blocks and as long as you hook up to water and sewer, you can have a permanent residence. Primary residences in a residential zone should be more substantial. It's up to the assembly to decide what the future town should look like. Do they want fabric structures to be allowed as permanent homes in the townsite?

EINSPRUCH said the community is facing a zoning dilemma. All of a sudden, the borough is zoning with zeal. He doesn't understand the mishmash of zones in the townsite.

SMITH asked about people using buses for residences. **GOLDBERG** believes a bus would qualify as an RV and, as such, only allowed in a mobile home park or as a permitted temporary use dwelling.

Motion: BERRY moved to "reconsider the 8/27/13 motion to schedule Resolution 13-08-344 for a second public hearing on 9/10/13," and the motion carried 4-2 with **VICK** and **SCHNABEL** opposed.

Motion: VICK moved to postpone the reconsidered motion to the 9/24/13 meeting, and it carried unanimously.

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

SCHNABEL would like a code review of HBC 2.62.010 and 2.24 regarding records and the duties of the clerk.

LAPP will attend Southeast Conference September 17-19 in Sitka.

SMITH thanked Chief **FORD** for the police department report. In all of his years, he has not seen one that is more informative.

16. ADJOURNMENT – 8:02pm

Motion: WATERMAN moved to "adjourn the meeting," and the motion carried unanimously.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk



Haines Borough
Assembly Agenda Bill

Agenda Bill No.: 13-319
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Add Size Limitation for Small Informational Signs	1. Ordinance 13-08-341 2. Planning Commission Recommendation
Originator: Planning Commission	
Originating Department:	
Date Submitted: 7/24/13	

Full Title/Motion:
Motion: Adopt Ordinance 13-08-341.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:

In Title 18, small informational signs related to the operation of a business, such as "Open/Close" or credit card signs, are exempt from regulation. The planning commission recommends a code revision to add a size limit for these small signs. On 8/13, the assembly introduced this and scheduled the first public hearing that was held on 8/27. The mayor expressed a need for more information, and the manager concurred there were questions that needed planning commission answers. Because of that, it was recommended this ordinance be held over for a third public hearing. The chair of the planning commission plans to attend the meeting to answer questions.

Referral:

Sent to:	Date:
Recommendation:	Meeting Date:
Refer to:	

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 8/27, 9/10, 9/24/13
Meeting Date(s): 8/13, 8/27, 9/10, 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE SECTION 18.90.060(I) TO ADD A SIZE LIMITATION FOR SMALL INFORMATIONAL SIGNS.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and if adopted with or without amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 18.90.060(I). Section 18.90.060(I) of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS TO THE CURRENT LANGUAGE

18.90.060 Signs exempt from regulation under this chapter.

The following signs shall be exempt from regulation under this chapter, provided these signs, if placed on private property, conform to the setback and placement standards set forth in HBC 18.90.050:

- A. Signs required by law, or temporary signs serving as public notice of a public event;
- B. Works of art, including murals, that do not contain a commercial message;
- C. Holiday lights or decorations;
- D. Traffic control, parking, directional or informational signs or devices, provided they contain no commercial message;
- E. Real estate signs up to six square feet advertising the sale, lease or rental of property upon which they are placed;
- F. Temporary display window signs on the interior surface of windows;
- G. Permanent signs in existence before June 19, 1996. Such signs shall not be replaced, moved, enlarged, altered, or reconstructed except in compliance with this chapter;
- H. Political signs up to 24 square feet in area displayed on private property. Such signs may be erected no more than 60 days prior to the election date and must be removed no later than seven days following the election date;
- I. Small informational signs **up to six square feet**, related to the operation of a business, such as "Open/Closed" or credit card signs;
- J. Construction signs not exceeding 32 square feet erected during construction, alteration or repair of a structure;
- K. Signs of less than two square feet giving information about a residential building or its occupants;
- L. Signs on vehicles used for commercial purposes containing information related to the vehicle's commercial use. Vehicle signs shall be attached to the surface of the vehicle and shall

Haines Borough
Ordinance No. 13-08-341
Page 2 of 2

not project from the vehicle surface more than the sign thickness. Vehicle signs include painted or magnetic signs;

M. Temporary signs used to advertise casual and isolated sales not made in the regular course of business. Such signs shall be located on private property and utilized only while the items for sale are available on that site. No more than one sign shall be allowed on the site for this purpose. The sign shall be portable, no larger than 16 square feet in area, shall not include the name of any business, but may show the name of a product for sale. The sign shall be removed from the site at the end of the business day. No temporary sign exempted under this subsection shall be allowed for more than two consecutive days at any one site.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS
____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 08/13/13
Date of First Public Hearing: 08/27/13
Date of Second Public Hearing: 09/10/13

Haines Borough
**BOROUGH ASSEMBLY
ACTION REQUEST**

DATE: July 11, 2013

TO: Borough Assembly

FROM: Haines Borough Planning Commission

PLANNING COMMISSION ACTION: W/S Hedden moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.90.060(I).” This motion passed unanimously.

RATIONALE: Currently, “the small informational signs related to the operation of a business, such as “Open/Close” or credit card signs” are exempt from regulation under Title 18. The Planning Commission determines to add a size limit for small signs.

PLANNING COMMISSION REQUEST: for the Borough Assembly to amend HBC 18.90.060(I) to read:

I. Small informational signs up to six square feet, related to the operation of a business, such as “Open/Closed” or credit card signs;

SUBMITTED BY  (signature)
Rob Goldberg
Planning Commission Chairman



Haines Borough
Assembly Agenda Bill

Agenda Bill No.: 13-320
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Remove code requirement for an ADEC biennial inspection of wastewater systems	1. Ordinance 13-08-342 2. Planning Commission Recommendation
Originator: Planning Commission	
Originating Department:	
Date Submitted: 7/24/13	

Full Title/Motion:
Motion: Adopt Ordinance 13-08-342.

Administrative Recommendation:

Fiscal Impact:		
Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:
Comp Plan Policy Nos.: _____ Consistent: Yes No

Summary Statement:
Title 18 requires wastewater systems to be inspected by a DEC-approved inspector every two years, at the property owner's expense. The planning commission recommends a code revision to remove this requirement because it cannot be enforced. Initial DEC inspection and approval would still be required. On 8/13, the assembly introduced this and scheduled the first public hearing that was held on 8/27. The mayor expressed a need for more information, and the manager agreed there are questions that need planning commission answers. Because of that, it was recommended this ordinance be held over for a third public hearing. The chair of the planning commission plans to attend the meeting to answer questions.

Referral:
Sent to: _____ Date: _____
Recommendation: _____ Refer to: _____ Meeting Date: _____

Assembly Action:
Workshop Date(s): _____ Public Hearing Date(s): 8/27, 9/10, 9/24/13
Meeting Date(s): 8/13, 8/27, 9/10, 9/24/13 Tabled to Date: _____

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE SECTION 18.60.010(I) REMOVE THE REQUIREMENT FOR A WASTEWATER DISPOSAL SYSTEM TO BE INSPECTED EVERY TWO YEARS BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and if adopted with or without amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 18.60.010(I). Section 18.60.010(I) of the Haines Borough Code is hereby amended to read as follows:

NOTE: ~~STRIKETHROUGH~~ ITEMS ARE DELETIONS

18.60.010 General approval criteria.

A land use permit, or conditional use permit, or a platting action permit for a subdivision, may be granted if all the following general approval criteria and applicable specific approval criteria of HBC [18.60.020](#) are complied with. The burden of proof is on the developer to show that the proposed use meets these criteria and applicable specific criteria for approval. Notwithstanding any of the following criteria, no use will be approved that will materially endanger the public health or safety or substantially decrease the value of property in the neighboring area. The burial of uncremated human remains outside a cemetery is prohibited.

...

I. Utilities. The proposed use shall be adequately served by public water, sewer, on-site water or sewer systems, electricity, and other utilities prior to being occupied. The borough may require a letter of commitment from a utility company or public agency legally committing it to serve the development if such service is required. If property on which a use is proposed is within 200 feet of an existing, adequate public water and/or sewer system, the developer shall be required to connect to the public systems. The borough may require any or all parts of such installation to be oversized, however the additional cost beyond the size needed for the development will be borne by the borough.

When, in the opinion of borough staff, no public sanitary sewer and/or water service is available within 200 feet of the property, the developer may request an exemption from the requirements to connect to these public utilities. All regulations of the State Department of Environmental Conservation pertaining to water extraction and wastewater disposal, as well as the requirements of HBC 13.04.080(G) pertaining to on-site wastewater disposal, shall apply. If exempted from the requirement to connect to public utilities, a developer must provide written Department of Environmental Conservation (DEC) approval of the on-site wastewater system design prior to permit approval. Upon installation and before closure, the wastewater disposal system must be inspected and approved by a DEC-approved inspector. ~~The wastewater disposal system must also be inspected by a DEC-approved inspector, at the property owner's expense, every two years, in the spring of the year, with a written approval of the system submitted to the borough by June 1st of the year.~~

Haines Borough
Ordinance No. 13-08-342
Page 2 of 2

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS
____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced:	08/13/13
Date of First Public Hearing:	08/27/13
Date of Second Public Hearing:	09/10/13

Haines Borough
**BOROUGH ASSEMBLY
ACTION REQUEST**

DATE: July 11, 2013

TO: Borough Assembly

FROM: Haines Borough Planning Commission

PLANNING COMMISSION ACTION: M/S Gonce moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.60.010(I).” This motion passed unanimously.

RATIONALE: Currently the code requires the wastewater system must be inspected by a DEC-approved inspector every two years. The Borough will consider removing this from the code since this cannot be enforced.

PLANNING COMMISSION REQUEST: for the Borough Assembly to amend HBC 18.60.010(I) to read:

I. Utilities. The proposed use shall be adequately served by public water, sewer, on-site water or sewer systems, electricity, and other utilities prior to being occupied. The borough may require a letter of commitment from a utility company or public agency legally committing it to serve the development if such service is required. If property on which a use is proposed is within 200 feet of an existing, adequate public water and/or sewer system, the developer shall be required to connect to the public systems. The borough may require any or all parts of such installation to be oversized, however the additional cost beyond the size needed for the development will be borne by the borough.

When, in the opinion of borough staff, no public sanitary sewer and/or water service is available within 200 feet of the property, the developer may request an exemption from the requirements to connect to these public utilities. All regulations of the State Department of Environmental Conservation pertaining to water extraction and wastewater disposal, as well as the requirements of HBC 13.04.080(G) pertaining to on-site wastewater disposal, shall apply. If exempted from the requirement to connect to public utilities, a developer must provide written Department of Environmental Conservation (DEC) approval of the on-site wastewater system design prior to permit approval. Upon installation and before closure, the wastewater disposal system must be inspected and approved by a DEC-approved inspector. ~~The wastewater disposal system must also be inspected by a DEC-approved inspector, at the property owner's expense, every two years, in the spring of the year, with a written approval of the system submitted to the borough by June 1st of the year.~~

SUBMITTED BY Rob Goldberg (signature)

Rob Goldberg
Planning Commission Chairman



Haines Borough
Assembly Agenda Bill

Agenda Bill No.: 13-322
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Amend Title 18 to add setback requirements to the General Use zone.	1. Ordinance 13-08-343 2. Planning Commission Recommendation 3. Additional Information from the Chair of the Planning Commission
Originator: Planning Commission	
Originating Department:	
Date Submitted: 7/24/13	

Full Title/Motion:
Motion: Adopt Ordinance 13-08-343.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
------------------------	--

Summary Statement:
Title 18 does not currently have setback requirements for the General Use zone, and the planning commission recommends some requirements be added. On 8/13, the assembly introduced this and scheduled the first public hearing that was held on 8/27. The mayor expressed a need for more information, and the manager agreed there are questions that need planning commission answers. Because of that, it was recommended this ordinance be held over for a third public hearing. The chair of the planning commission provided additional information attached to this agenda bill and will attend the meeting to answer questions, as needed.

Referral:

Sent to:	Date:
Recommendation:	Refer to: Meeting Date:

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 8/27, 9/10, 9/24/13
Meeting Date(s): 8/13, 8/27, 9/10, 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE SECTION 18.80.030(B) TO ADD SETBACK REGULATIONS TO THE GENERAL USE ZONE.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and if adopted with or without amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance will become effective January 1st, 2014.

Section 4. Amendment of Section 18.80.030(B). Section 18.80.030(B) of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS TO THE CURRENT LANGUAGE

18.80.030 Setbacks and height.

B. Height is measured from the average grade of the footprint of the structure to the highest point on the structure, measured at the center of each of the four exterior walls.

Setbacks and Height Restrictions by Zone								
Zoning District	Height Limit (in feet)	Industrial Setbacks (in feet) ***		Commercial Setbacks (in feet)		Residential Setbacks (in feet)		
		From Street Lot Lines	From Residential Lots	From Street or Alley Lot Lines	From Other Lot Lines	From Street Lot Lines	From Alley Lot Lines	From Other Lot Lines
I/H	30 *	0	50	0	0	N/A	N/A	N/A
I/L/C	30	0	50	0	0	20	10	10
I/W	30	0	50	0	0	20	10	10
C	30	0	50	0	0	20	10	10
W	30	0	50	0	0	20	10	10
SSA	30 **	N/A	N/A	10	5	20	10	10
SR	30	N/A	N/A	N/A	N/A	20	10	10
MR	30	N/A	N/A	0	0	20	10	10
RR	30	N/A	N/A	0	0	20	10	10
RMU	30	0	50	0	0	20	10	10
MU	30	0	50	0	0	20	10	10

Haines Borough
Ordinance No. 13-08-343
Page 2 of 2

Setbacks and Height Restrictions by Zone								
Zoning District	Height Limit (in feet)	Industrial Setbacks (in feet) ***		Commercial Setbacks (in feet)		Residential Setbacks (in feet)		
		From Street Lot Lines	From Residential Lots	From Street or Alley Lot Lines	From Other Lot Lines	From Street Lot Lines	From Alley Lot Lines	From Other Lot Lines
REC	30	N/A	N/A	N/A	N/A	20	10	10
<u>GU</u>	<u>N/A</u>	<u>0</u>	<u>50</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>10</u>	<u>10</u>

* May exceed 30 feet only by provisions of a conditional use permit granted by the planning commission.

** May be up to 40 feet under the provisions of a conditional use permit granted by the planning commission, but only if for a replica building replacing a building of that height that has been destroyed, and if all special provisions of the historic district and all other provisions of this title are met.

*** As long as all requirements of the state fire code or other applicable regulations are met.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS _____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 08/13/13
Date of First Public Hearing: 08/27/13
Date of Second Public Hearing: 09/10/13

Haines Borough
BOROUGH ASSEMBLY
ACTION REQUEST

DATE: July 11, 2013

TO: Borough Assembly

FROM: Haines Borough Planning Commission

PLANNING COMMISSION ACTION: M/S Venables moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.80.030(B) with an effective date of January 1, 2014.” This motion passed unanimously.

RATIONALE: Currently the Borough code does not have setback requirements for general use zone. This issue should be addressed for public safety concerns. Setbacks information can be required in the construction declaration form. However, HBC 18.30.010(A)(2)(c) requires a construction declaration should be filed within 60 days of the start of construction. The filing period could be a problem if construction starts before the construction declaration is filed, and the buildings do not meet the proposed setback requirements. If the Assembly considers adopting this proposed ordinance, the Planning Commission needs some time to amend the filing period of a construction declaration.

PLANNING COMMISSION REQUEST: for the Borough Assembly to amend HBC **18.80.030(B)** to read:

B. Height is measured from the average grade of the footprint of the structure to the highest point on the structure, measured at the center of each of the four exterior walls.

Setbacks and Height Restrictions by Zone								
Zoning District	Height Limit (in feet)	Industrial Setbacks (in feet) ***		Commercial Setbacks (in feet)		Residential Setbacks (in feet)		
		From Street Lot Lines	From Residential Lots	From Street or Alley Lot Lines	From Other Lot Lines	From Street Lot Lines	From Alley Lot Lines	From Other Lot Lines
I/H	30 *	0	50	0	0	N/A	N/A	N/A
I/L/C	30	0	50	0	0	20	10	10

Setbacks and Height Restrictions by Zone

Zoning District	Height Limit (in feet)	Industrial Setbacks (in feet) ***		Commercial Setbacks (in feet)		Residential Setbacks (in feet)		
		From Street Lot Lines	From Residential Lots	From Street or Alley Lot Lines	From Other Lot Lines	From Street Lot Lines	From Alley Lot Lines	From Other Lot Lines
I/W	30	0	50	0	0	20	10	10
C	30	0	50	0	0	20	10	10
W	30	0	50	0	0	20	10	10
SSA	30 **	N/A	N/A	10	5	20	10	10
SR	30	N/A	N/A	N/A	N/A	20	10	10
MR	30	N/A	N/A	0	0	20	10	10
RR	30	N/A	N/A	0	0	20	10	10
RMU	30	0	50	0	0	20	10	10
MU	30	0	50	0	0	20	10	10
REC	30	N/A	N/A	N/A	N/A	20	10	10
<u>GU</u>	<u>N/A</u>	<u>0</u>	<u>50</u>	<u>0</u>	<u>0</u>	<u>20</u>	<u>10</u>	<u>10</u>

SUBMITTED BY _____



(signature)

Rob Goldberg
Planning Commission Chairman

From: Rob Goldberg [mailto:artstudioalaska@yahoo.com]
Sent: Thursday, September 19, 2013 12:18 AM

Hi Julie,

I think the informational sign and wastewater inspection ordinances are pretty clear. I will try to be at the meeting in case I need to explain. Here are some comments on the setbacks in the General Use:

To: Haines Borough Assembly
From: Haines Borough Planning Commission
Re: Setbacks in the General Use Zone

The concept of setbacks has been around for centuries, and they have long been regarded as fundamental to community planning. In the late 1600's, William Penn instituted setbacks in the Pennsylvania colony as a way of reducing conflicts between neighbors. He noted, as does the Planning Commission today, that many disputes happen over borders.

Setbacks promote public safety. Firemen need space to work around buildings. One building on fire quickly becomes two buildings on fire if they are too close together. Also, buildings that are right on property lines can shed snow on the neighbor's lot. Homeowners also need space to construct and maintain buildings without setting up ladders across lot lines.

Often, land owners do not know exactly where their lot lines are, and setbacks can prevent buildings from being accidentally constructed partly on the neighbor's land.

Setbacks also provide a buffer between different types of land uses, such as when an industrial use is close to residences. Chapter 7 of the Comprehensive Plan, Objective 5G states: "Protect homeowners' investments by minimizing adjacent incompatible land development." It goes on to mention setbacks as one of the tools that can be used to accomplish this.

The General Use Zone allows for many types of land use, and parts of it, like the Chilkat and Klehini valleys, are becoming more populated. Although most of the recent subdivisions have had lots of an acre or larger, it should be remembered that the Code specifies only a minimum lot size of 10,000 square feet, or about a quarter of an acre. The Planning Commission thinks that setbacks will be an essential part of the orderly future growth of this area.

Rob Goldberg
Haines Planning Commission Chair



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-334

Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Personnel Records Disclosure	1. Ordinance 13-08-347 2. Substitute Ordinance containing amendments recommended by the Personnel Committee 3. Email string between the mayor and the HR Director for CBJ with attached attorney general paper on the topic 4. 8/8/13 Memorandum from the Borough Attorney
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 7/25/13	

Full Title/Motion:
Motion: Adopt Ordinance 13-08-347.

Administrative Recommendation:
The borough manager recommends adoption.

Fiscal Impact:		
Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:	
Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No

Summary Statement:
The borough attorney prepared a proposed ordinance designed to specify what items in an employee's personnel file are confidential and not available for public review. The ordinance is modeled on a state statute related to personnel records of state employees (AS 39.25.080). This means it provides the same level of confidentiality to borough employees as is currently provided to state employees. The assembly has the authority to classify personnel records as confidential under state law (AS 40.25.110) and the borough charter (Section 18.04(B)). On 8/13, the assembly introduced this. After the first hearing on 8/27, it was referred to the personnel committee who met on 9/9. The committee recommends some amendments, and the borough attorney drafted a substitute ordinance for consideration. It adds that applications and evaluation summaries for borough manager, borough clerk, CFO, and police chief are available for disclosure. On 9/10, the assembly scheduled the second hearing.

Referral:	
Sent to: Personnel Committee	Date: 8/27/13
Recommendation: Amend, Adopt Refer to:	Meeting Date: 9/9/13

Assembly Action:	
Workshop Date(s):	Public Hearing Date(s): 8/27, 9/24/13
Meeting Date(s): 8/13, 8/27, 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE CHAPTER 2.72.080 TO SPECIFY WHAT CATEGORIES OF PERSONNEL RECORDS ARE AVAILABLE TO THE PUBLIC.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 2.72.080. Haines Borough Code 2.72.080 is amended, as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

2.72.080 Security of records.

A. All personnel records shall be kept by the manager or designee and shall not be removed or opened to the public without written authorization of the personnel officer, applicant, employee or other authorized person. ~~The manager shall develop public access to records regulations which must have prior approval of the assembly.~~ **Personnel records, including employment applications and examination, performance evaluations and other assessment materials, are confidential and are not open to public inspection except as provided in this section.**

B. Access by Employees. Any employee may request copies of their own personnel files upon three-business-days' notice or may review, in the presence of the borough manager or designee, their own personnel file upon 24-business-hours' notice to the department head or personnel officer.

C. It shall be unlawful to disclose confidential information included in personnel records without prior written permission of the employee, excepting those records which are necessary for the proper functioning of the chief fiscal officer and clerk's office and those which, from time to time, the personnel officer deems necessary.

D. The following information is available for public inspection:

(1) the names and position titles of all borough employees;

(2) the position held by a borough employee;

(3) prior positions held by a borough employee;

(4) whether a borough employee is a permanent, temporary or probationary employee;

(5) the dates of appointment and separation of a borough employee;

(6) the compensation authorized for a borough employee

(7) whether a borough employee was dismissed for cause under HBC

2.82.040(A).

Haines Borough
Ordinance No. 13-08-347
Page 2 of 2

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced:	08/13/13
Date of First Public Hearing:	08/27/13– referred to Personnel Committee
Date of Second Public Hearing:	09/24/13

Draft

HAINES BOROUGH, ALASKA
ORDINANCE No. 13-08-347

Substitute Ordinance
Drafted by the Borough
Attorney as a result of the
9/9/13 Personnel
Committee Meeting

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE CHAPTER 2.72.080 TO SPECIFY WHAT CATEGORIES OF PERSONNEL RECORDS ARE AVAILABLE TO THE PUBLIC.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 2.72.080. Haines Borough Code 2.72.080 is amended, as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

2.72.080 Security of records.

A. All personnel records shall be kept by the manager or designee and shall not be removed or opened to the public without written authorization of the personnel officer, applicant, employee or other authorized person. ~~The manager shall develop public access to records regulations which must have prior approval of the assembly.~~ **Personnel records, including employment applications and examination, performance evaluations and other assessment materials, are confidential and are not open to public inspection except as provided in this section.**

B. Access by Employees. Any employee may request copies of their own personnel files upon three-business-days' notice or may review, in the presence of the borough manager or designee, their own personnel file upon 24-business-hours' notice to the department head or personnel officer.

C. It shall be unlawful to disclose confidential information included in personnel records without prior written permission of the employee, excepting those records which are necessary for the proper functioning of the chief fiscal officer and clerk's office and those which, from time to time, the personnel officer deems necessary.

D. The following information is available for public inspection:

(1) the names and position titles of all borough employees;

(2) the position held by a borough employee;

(3) prior positions held by a borough employee;

(4) whether a borough employee is a permanent, temporary or probationary employee;

(5) the dates of appointment and separation of a borough employee;

(6) the compensation authorized for a borough employee;

(7) whether a borough employee was dismissed for cause under HBC

2.82.040(A):

(8) applications for the positions of borough manager, borough clerk, chief fiscal officer, and chief of police;

(9) summaries of evaluations of the borough manager, borough clerk, chief fiscal officer and chief of police.

Haines Borough
Ordinance No. 13-08-347
Page 2 of 2

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced:	08/13/13
Date of First Public Hearing:	08/27/13– referred to Personnel Committee
Date of Second Public Hearing:	09/24/13

Julie Cozzi

From: Stephanie Scott
Sent: Friday, August 30, 2013 9:02 AM
To: DG_Assembly
Cc: Mark Earnest; Brooks Chandler; Julie Cozzi
Subject: Personnel Records confidentiality
Attachments: Richard L Burton.pdf; ATT00001.htm

Hi everyone,

I think you will find the information from Mila Cosgrove below helpful. Mila is the HR director for the City and Borough of Juneau. Mila also has a cabin here in Haines and I have engaged her on this topic.

I do believe that you will find that the majority of municipalities in the state of Alaska provide for the confidentiality of personnel records. I do not believe that the ordinance drafted by the borough attorney sets the municipality up for a "test case." The proposed ordinance mimics the ordinances in force in other municipalities; the two examples I have provided are the rules from CBJ and from the City of Valdez. Time permitting, I will have others for you prior to the Committee meeting on the 9th.

I think that being a public employee is very challenging. I witness, almost daily, and I experience disparagement of public employees by individuals in the public. Mostly the conflict is a result of individuals feeling frustrated by the imposition of regulations. It is understandable. People tend to react negatively when called out for a violation; or when constrained by regulations. I think that is human nature. Public employees are required to rise above the negative reactions, regardless of the source. In practice, we (the elected officials) are too. So we know it is tough. I feel like exposing personnel files to public inspection may contribute to the public's conception that there is some inherent "right" to criticize public employees. I worry that allowing these sensitive records to become public will actually create fear on the part of our employees, and contribute to a lack of civility in our public process.

A concept is circulating that I would like to debate: public employees work for the public. This is not true. Through the Assembly, we actually have 3 employees who might be said to work for the elected officials: the clerk, the CFO, and the manager. The rest of the staff works for the manager! We are a representative democracy, not a direct democracy. We "the people" govern through our representatives, not directly. I can accept the premise that three public employees work for "us," "us" being the Assembly (not even the Mayor!), but the remaining 70+ work for the manager!

S

Stephanie Scott
Mayor, Haines Borough
907-766-2231 ext.30

Begin forwarded message:

From: Mila Cosgrove <Mila_Cosgrove@ci.juneau.ak.us>
Date: August 29, 2013, 5:06:55 PM AKDT
To: Stephanie Scott <mayor_scott@haines.ak.us>
Subject: Your inquiry

Hi Stephanie,

The underlying argument is article 1, section 22 of the Alaska Constitution which provides "the right of the people to privacy is recognized and shall not be infringed."

Even where employers are ordered to release personnel records by the court, they are still vulnerable to claims that they have violated an employee's privacy.

Sorry to say I don't have any specific paper that I've drafted on this topic. However, I've attached an Attorney General's opinion that addresses this topic. The pertinent portion is towards the end of the document.

The CBJ Code does not specifically address personnel files, that is handled through our Personnel Rule Regulations. Specifically, 17 PR 010 provides:

17 PR 010. Personnel Records.

(a) Personnel records are confidential and are not open to public inspection except as provided in this section.

(b) All requests for release of personnel records shall be submitted to the Human Resources Director. The director or the director's designee shall review the requests and approve the release of information as authorized in this section. Personnel records authorized for release shall be available for inspection subject to reasonable restrictions on the time and manner of inspection.

(c) The following information is available for public inspection:

(1) The names and classification titles of all employees,

(2) The position held by an employee,

(3) Prior CBJ positions held by an employee,

(4) Whether an employee is in the classified or partially exempt service,

(5) The dates of appointment and separation of an employee,

(6) The wages paid to an employee, and

(7) Applications for positions in the partially exempt service except for address, social security number, date of birth, personal telephone numbers, and Equal Employment Opportunity information.

(d) Personnel records not open to public inspection are released only under the following conditions.

(1) An employee or former employee may examine the his or her own personnel records, with the exception of selection information deemed confidential under these Rules, and may give written authorization to others to examine these records; and

(2) CBJ employees with a direct supervisory relationship with the employee may examine the employee's personnel records. Access to personnel records may be granted only for purposes related to the CBJ's Human Resource system.

(e) In the absence of written authorization from the employee or former employee:

(1) Personnel records are released only to federal, state or CBJ officials authorized by law to review the records; or

(2) Personnel records may be released upon receipt of an order of a court of competent jurisdiction.

(Res. No. 2370, 2006)

Mila

Mila Cosgrove, IPMA-CP, SPHR
Human Resources & Risk Management Director
City and Borough of Juneau, Alaska
907.586.0225 ph.
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From: Stephanie Scott [mailto:mayor_scott@haines.ak.us]
Sent: Thursday, August 29, 2013 2:38 PM
To: Mila Cosgrove
Subject:

Hi Mila,

We are moving down the path prescribed by our attorney to exempt personnel files from public disclosure. I have attached the proposed ordinance. I have ascertained that the City of Valdez code has language similar to ours, thus debunking the argument that if we do this we will set the municipality up to be some kind of a legal "test" case pursued by those who believe it is illegal to provide for the confidentiality of these records. I tried to find the language in the code of the City and Borough of Juneau that governs personnel records but couldn't readily locate it. Might you be able to give me that citation? Thanks.

Beyond the legal question, though, is the policy question. What is the justification for adopting the legal language? What is the justification for maintaining the confidentiality of employee personnel records, including performance evaluations? That is the piece I need some professional help to build! Do you have any paper on the pros and cons of releasing public employee evaluations?

Thanks.

Stephanie

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1994 WL 804488 (Alaska A.G.)

Office of the Attorney General

State of Alaska
File No. 663-93-0039
Opinion No. 1
November 25, 1994

Public Release of Police Records

*1 The Honorable Richard L. Burton
Commissioner
Department of Public Safety
450 Whittier Street
Juneau, Alaska 99811

Dear Commissioner Burton:

You have asked for guidelines to follow in responding to requests for public release of various law enforcement records kept by the department. In view of the amendments that were made to the public records statutes in 1990 and 1994, it is appropriate for us to review what records must be kept confidential and what records should be released to the public. ¹

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REQUESTS BY PARTIES IN LITIGATION WITH THE STATE

*2 At the outset, we note that different rules apply when requests for documents are made by a party in litigation with the state or one of its agencies than when requests are made by the general public.² AS 09.25.122, enacted in 1990, specifies: LITIGATION DISCLOSURE. A public record that is subject to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record subject to disclosure and copying even if the record is used for, included in, or relevant to litigation, including law enforcement proceedings, involving a public agency, except that with respect to a person involved in litigation, the records sought shall be disclosed in accordance with applicable court rules. In this section, "involved in litigation" means a party to litigation or representing a party to litigation, including obtaining public records for the party.

(Emphasis added.) This requirement ensures that the state and its agencies are given the same protections afforded all litigants by the court rules governing discovery even when the documents sought are public records.³ Thus, when a request for records is made, your department should inquire whether the records are being sought in aid of pending litigation -- either civil or criminal -- against the State of Alaska or one of its agencies. If so, the request must be denied and the person told why the request is being denied.

REQUESTS BY THE GENERAL PUBLIC -- AN OVERVIEW

Alaska has two primary public records statutes, [AS 09.25.110](#) and [AS 09.25.120](#), which govern the release of records to the general public. [AS 09.25.110\(a\)](#) states in relevant part: “Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.”

[AS 09.25.120\(a\)](#) expands upon this as follows:

Every person has a right to inspect a public record in the state, including public records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles unless disclosure is authorized by law; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law; (5) to the extent the records are required to be kept confidential under [20 U.S.C. 1232g](#) and the regulations adopted under [20 U.S.C. 1232g](#) in order to secure or retain federal assistance; (6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions, (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or (G) could reasonably be expected to endanger the life or physical safety of an individual.

*3 Under these statutes, the government must initially presume that the records in its possession are subject to inspection by the public; this presumption must be given effect unless a law can be identified that authorizes or requires the record to be kept confidential. M. Knuth, *Inspection and Discovery of Public Records in Alaska*, 4 *ALASKA LAW REVIEW* 277, 310 (1987).

Nondisclosure of police records will most often be based on the exceptions in [AS 09.25.120\(2\)](#), (4) and (6). The second exception (juvenile records) has now been clarified in [AS 47.10.090](#) and [AS 47.10.093](#). The sixth exception specifically relates to law enforcement records.⁴ Both of those exceptions will be discussed in later sections of this memorandum. The fourth exception, however, requires special comment about the term “state law.”

[AS 09.25.120\(4\)](#) authorizes the withholding of “records required to be kept confidential by a federal law or regulation or by state law.” (Emphasis added.) The term “state law” includes: any statute⁵ or constitutional provision⁶ requiring or authorizing confidentiality, the executive privilege doctrine⁷ and perhaps other privileges,⁸ and the common law “public interest” exception.⁹ *Inspection and Discovery of Public Records in Alaska*, at 280-81 and 293.

We turn next to consider several different types of records. These are: (A) investigative reports in ongoing and completed criminal cases, (B) drivers' records, including accident reports and driver's license photographs, (C) “police blotters,” (D) criminal history records, (E) records relating to juveniles, and (F) miscellaneous records. We also have provided advice on the handling of requests and court orders, and have provided a general summary.

A. Police Investigative Reports

[AS 09.25.120\(6\)](#) provides certain exemptions for “records or information compiled for law enforcement purposes,” which for your department consist largely of police investigative reports of criminal offenses.¹⁰ Certain information contained in these reports will be confidential whether the investigation is ongoing or completed, and this will be discussed first. Thereafter, however, different analyses must be used to determine if a report is subject to disclosure or not, depending upon whether the investigation is ongoing or completed.

A.1. Information to be Withheld Regardless of Whether Investigation Is Ongoing or Completed

[AS 09.25.120\(6\)](#) sets out exceptions for several types of information in police reports that must be withheld regardless of whether the investigation is ongoing or completed.

A.1(a) Confidential Sources

[AS 09.25.120\(6\)\(D\)](#) authorizes the withholding of law enforcement records, regardless of the status of the investigation, if the disclosure “could reasonably be expected to disclose the identity of a confidential source.” It is apparent under this section that the department may withhold a record revealing the identity of informants, although whether other persons may also be considered a confidential source is an uncertain issue in Alaska.

A.1(b) Confidential Techniques and Guidelines

*4 [AS 09.25.120\(6\)\(E\)](#) and (F) authorize the withholding of records if their release “would disclose confidential techniques and procedures for law enforcement investigations or prosecutions,” or “would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law.” Thus, records revealing “drug profiles”, for example, need not be disclosed to the public.

A.1(C) Information That Could Endanger a Person's Safety

Finally, [AS 09.25.120\(6\)\(G\)](#) authorizes the withholding of records, regardless of the status of the investigation, when their disclosure “could reasonably be expected to endanger the life or physical safety of an individual.” Any such information clearly should be withheld from public disclosure. This exception applies to the safety of police officials as well as the public, thus the department need not disclose information about undercover officers.

A.2. Investigative Reports in Ongoing Investigations

Records that “could reasonably be expected to interfere with enforcement proceedings” are exempt from disclosure under [AS 09.25.120\(6\)\(A\)](#). Courts have uniformly held that this protects police reports and other records relating to ongoing investigations. See, e.g., [Cox Arizona Publications v. Collins](#), 818 P.2d 174 (Ariz. App. 1991); [Wells v. Sarasota Herald Tribune Co.](#), 546 So. 2d 1105 (Fla. App. 1989). Accordingly, such records can be withheld from the general public. Furthermore, unless and until criminal charges are filed, a defendant has no greater right to a copy of an investigative report than any other member of the public. Once charges are filed, a defendant's access to investigative materials is governed by [Criminal Rule 16](#), relating to discovery in criminal cases.

Some courts have recognized an exception, however, allowing victims to obtain copies of their own statements, even if the investigation has not yet been concluded. See [Pinkava v. Corrigan](#), 581 N.E.2d 1181, 1182 (Ohio App. 1990) (twelve-year-old rape victim could obtain copy of her statement).¹¹ Victims, however, are not automatically entitled to the entire report in an ongoing investigation. In [Little v. Gilkinson](#), 636 P.2d 663 (Ariz. App. 1981), the police had investigated the murder of the plaintiff's son, but were unable to develop a case. The father sought copies of the reports, which he wanted to turn over to a private investigator. The police claimed release would hinder their investigation. The appellate court concluded it was necessary to apply the public interest balancing test to determine whether the report should be released.

We believe that the Alaska courts may well adopt a similar balancing approach. A complicating factor, however, is the defendant's right to a fair trial. [AS 09.25.120\(6\)\(B\)](#) specifically exempts from disclosure records that “would deprive a person of a right to a fair trial or an impartial adjudication.” Rarely, if ever, will the state be able to adequately assess the impact that disclosure to a victim would have on a defendant's right to a fair trial. Thus this provision essentially authorizes the withholding of all records in cases in which criminal judicial proceedings have not begun or are still pending. This exemption applies to the records of a case until no further court action is expected; e.g., the case is dismissed or a defendant is sentenced.

*5 We conclude that these competing interests must be resolved by the judiciary. Accordingly, except for a victim's own statement, a victim's request for records while the investigation is ongoing should be denied unless the victim obtains a court order compelling the disclosure.

A.3. Investigative Reports in Completed Criminal Cases

Once a criminal investigation and any related prosecution is completed, a police report can more readily be disclosed. If, however, there remains a realistic possibility of discovery of additional evidence, a case can nonetheless be deemed to be ongoing (and thus not subject to disclosure), even if it has been reviewed for prosecution and no charges have been filed or prosecution has been declined.

Assuming that the records do not involve a juvenile¹² or any of the exceptions enumerated in section A.1, reports in completed cases are generally subject to disclosure unless release “could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness.” AS 09.25.120(6)(C). This appears to be a legislative codification of the right to privacy protected by the state constitution.¹³

This privacy exception requires that you separately analyze the different documents that make up the investigative file, as well as the different types of information contained within those documents. It is quite possible that some parts of an investigative file will be subject to disclosure, while other parts are not. See *Lame v. United States Department of Justice*, 654 F.2d 917, 923 (3d Cir. 1981) (“There can be no question that the 7(C) balancing test must be conducted with regard to each document, because the privacy interest and the interest of the public in disclosure may vary from document to document. Indeed these interests may vary from portion to portion of an individual document.”) There may also be instances in which summaries of reports are deemed disclosable, but transcripts of interviews are not. This is because the transcripts may be more likely to contain statements that are speculative, unsubstantiated, defamatory, or simply irrelevant to the investigation, thus leading to the conclusion that releasing the transcript would constitute an unwarranted invasion of the privacy of various persons.

In completed investigations, there are separate categories of information that require separate consideration: information about victims and witnesses, information about defendants charged with a crime, and information about suspects not charged with a crime.

A.3(a) Victim and Witness Information

Information about victims and witnesses may be partially protected by either the Victims' Rights Act of 1991 or by a promise or expectation of confidentiality or privacy.

A.3(a)(i) Information Protected by Victims' Rights Act

In 1991, the legislature enacted the Victims' Rights Act, part of which addresses victim and witness information confidentiality. AS 12.61.100 -- 12.61.150. AS 12.61.110 requires the department to “delete” the residence and business addresses and telephone numbers of all victims and witnesses from reports or documents made available for public inspection. Additionally, the name of a victim of an offense under AS 11.41.300(a)(1)(C) (kidnapping with intent to sexually assault) or 11.41.410 -- 11.41.460 (sexual assault, sexual abuse of a minor, incest, unlawful exploitation of a minor, and indecent exposure) is not to be disclosed to the public and should be deleted from any record made available for public inspection.

*6 Although a victim or witness's name, address and telephone number should be deleted from the report, usually the content of the witness's statement remains subject to disclosure. See, e.g., *Providence Journal Co. v. United States Dept of Army*, 781 F. Supp. 878, 886 (D.R.I. 1991). Courts have recognized, however, that redacting names may not be sufficient to protect the witnesses' identities. In such situations, withholding of their statements has been upheld. *Brady v. Ottaway Newspapers, Inc.*,

467 N.Y.S.2d 417, 418 (Sup. Ct. App. Div. 1983), *aff'd*, 484 N.Y.S.2d 798 (Ct. App. 1984) (local police scandal that did not result in prosecutions). See also *Hawkins v. Kurlander*, 469 N.Y.S.2d 820 (Sup. Ct. App. Div. 1983) (where names of witnesses had been revealed already, substance of their testimony had to be withheld).

There may be instances when even nondisclosure of the person's statement is insufficient to protect that person's identity, e.g., cases in which the underlying facts make it apparent who the victim was. In these instances, we believe that the entire report should be withheld from public release absent a specific court order compelling the disclosure or advice received from the Department of Law.

A.3(a)(ii) Promise or Expectation of Confidentiality/Privacy

Courts from other jurisdictions have grappled repeatedly with whether it is proper to assume that victims or witnesses were promised or expected confidentiality when they cooperated in an investigation and what the result should be if such confidentiality was promised or expected.¹⁴ In *United States Department of Justice v. Landano*, 508 U.S. 165, 113 S.Ct. 2014, 124 L.Ed.2d 84 (1993), the United States Supreme Court acknowledged the common understanding that a "statement can be made 'in confidence' even if the speaker knows the communication will be shared with limited others, as long as the speaker expects that the information will not be published indiscriminately." 124 L.Ed.2d at 95. Accordingly, a "source should be deemed confidential if the source furnished information with the understanding that the FBI would not divulge the communication except to the extent the Bureau thought necessary for law enforcement purposes." *Id.* at 95-96.¹⁵

The Court rejected, however, an argument that a promise of confidentiality should always be implied for anyone who cooperates with a criminal investigation. *Id.*¹⁶ Nonetheless, it left the door open for such presumptions to be used in narrower circumstances. *Id.* at 98-99. Whether a promise of confidentiality should be implied or not will depend upon "factors such as the nature of the crime that was investigated and the source's relation to it," which should provide evidence as to whether a fear of retaliation is reasonable or not. *Id.* at 99.¹⁷ Examples of cases in which it is reasonable to categorically assume assurances of confidentiality include investigations relating to drug trafficking, gang-related violence, or organized crime.

*7 In other circumstances, an implicit promise or expectation of confidentiality may exist, but cannot be categorically presumed from the nature of the offense, and the witness's willingness to testify is not dispositive.¹⁸ In these cases, protection under this exception will still exist, but it will be incumbent upon the government to establish that the victim or witness held an actual and reasonable expectation of such confidentiality. Thus, the government should withhold the records, but be prepared to make an in camera demonstration of an expectation of confidentiality, relying on affidavits from the subject. *Id.*

A.3(a)(iii) Effect of Witness's Death

Courts have differed on the impact resulting from the death of the suspect and/or a witness. In *Kiraly v. Federal Bureau of Investigation*, 728 F.2d 273, 277-78 (6th Cir. 1984), the court rejected the argument that the right to privacy ends upon a witness's death, concluding that it remained inappropriate to reveal the witness's identity. See also *Keys v. United States Dep't of Justice*, 830 F.2d 337 (D.C. App. 1987) (forty-year-old investigation still protected by deceased subject's right of privacy).

In *Ferguson v. Federal Bureau of Investigation*, 762 F. Supp. 1082, 1098 (S.D.N.Y. 1991), however, the court held that the right of privacy ceases to exist upon the witness's death. Similarly, in *Schmerler v. Federal Bureau of Investigation*, 700 F. Supp. 73 (D.D.C. 1988), despite the FBI's argument that its witnesses must have a perpetual promise of confidentiality, the court ruled that information gathered in the 1930s under an assumption of confidentiality was subject to release. See also *Silets v. Federal Bureau of Investigation*, 591 F. Supp. 490 (N.D. Ill. 1984) (release would not cause unwarranted invasion of privacy).

This issue has not been resolved yet in Alaska. We conclude that in these circumstances it is better to err on the side of protecting privacy than disclosing information that cannot be “undisclosed” thereafter. Please contact this office if presented with an unusual case.

A.3(b) Defendants (Charges Filed)

With respect to criminal defendants, we believe that the disclosure of investigative reports does not constitute “an unwarranted invasion of [the defendant's] personal privacy” when charges have been filed or an arrest has been made, because the public nature of the proceedings eliminates any reasonable expectation of privacy.¹⁹ Thus, subject to the victim/witness information constraints noted above, we believe that investigative reports from a case in which charges have been filed or an arrest has been made must be made available for inspection by the public once the proceedings have ended; i.e., the charges have been dismissed or the defendant has been sentenced. This will ensure that the disclosure does not “deprive a person of a right to a fair trial or an impartial adjudication” pursuant to [AS 09.25.120\(2\)](#). As the court stated in [Tennessean Newspaper, Inc. v. Levi](#), 403 F. Supp. 1318 (D.C. Tenn. 1975):

*8 [I]ndividuals who are arrested or indicted become persons in whom the public has a legitimate interest, and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest.... [T]his right [of privacy] becomes limited and qualified for arrested or indicted individuals, who are essentially public personages.

[403 F. Supp. at 1321](#). See also [Hudgens v. Renton](#), 746 P.2d 320 (Wash. App. 1987) (acquitted defendant's right of privacy did not outweigh public's interest in disclosure of police report).

Nonetheless, a defendant's right to privacy may support a regulation authorizing reports to be kept confidential in cases in which the charges were dismissed more than a certain number of years ago; e.g., ten years. It seems reasonable to conclude that, with the passage of time, the defendant's expectation of privacy in dismissed charges increases, while the public's interest in disclosure decreases. See [Napper v. Georgia Television Co.](#), 356 So.2d 640, 644 (Ga. 1987) (remoteness in time of events is a relevant factor). But see [Church of Scientology v. Phoenix Police Dep't](#), 594 P.2d 1034 (Ariz. App. 1979) (twenty-year-old records subject to disclosure). We note that [AS 12.62.160\(b\)\(9\)](#), which will become effective July 1, 1995, will authorize the disclosure of “past conviction information ... if less than 10 years has elapsed from the date of unconditional discharge to the date of the request.” This suggests a legislative finding that, in at least one context of computerized criminal justice information, after 10 years has elapsed a defendant's expectation of privacy is greater than the public's interest in the disclosure of the information.

A.3(c) Suspects (Charges Not Filed)

A more difficult question is presented when a criminal investigation is completed and does not result in charges being filed or an arrest being made. As the Alaska Supreme Court has noted: “The right to privacy is not absolute.... Rather, ‘there must be ... a balancing of conflicting rights and interests.’” [Jones v. Jennings](#), 788 P.2d 732, 738 (Alaska 1990) (quoting [Messerli v. State](#), 626 P.2d 81, 83 (Alaska 1981)). This balancing test must be performed each time a report is requested in a case closed without an arrest or charge being made.

The competing factors are apparent: On the one hand, the suspect would probably choose to keep confidential the fact that he or she was once under suspicion. On the other hand, the public may have a right to know about the investigation, at least to assure itself that its public servants are performing their duties properly and not inappropriately letting criminals go.

[AS 09.25.120\(6\)\(C\)](#) replicates an exception to the federal Freedom of Information Act that exempts records when their disclosure would “constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness.” [5 U.S.C. § 552\(b\)\(7\)\(C\)](#). This exception has been broadly interpreted by some federal courts.²⁰ A prominent example is [Fund For Constitutional Government v. National Archives & Record Service](#), 656 F.2d 856, 864 (D.C. Cir. 1981), which arose when

the government denied a request for the reports prepared during the Watergate investigation. The appellate court affirmed the denial, stating that there could be no clearer example of an unwarranted invasion of personal privacy than to “announce to the world” that a person had been the target of an investigation. At the same time, however, the court concluded that it could not adopt a per se rule, in every case where individuals have been investigated but not charged with a crime, that information is properly exempt from disclosure under Exemption 7(C). 656 F.2d at 866 (footnote omitted). See also [Struth v. Federal Bureau of Investigation](#), 673 F. Supp. 949, 965 (D. Wis. 1987).

*9 Other federal courts have also rejected the suggestion that investigative reports should be presumed exempt from disclosure if charges were not filed. See, e.g., [Weiner v. Federal Bureau of Investigation](#), 943 F.2d 972, 985 (9th Cir. 1991). In [Landano v. United States](#), 758 F. Supp. 1021, 1026 (D.N.J. 1991), aff’d, 956 F.2d 422 (3rd Cir. 1992), rev’d on other grounds, 508 U.S. 165, 113 S.Ct. 2014, 124 L.Ed.2d 84 (1993), the court recognized that the public has an interest in reviewing investigative reports to determine whether its servants are fulfilling their duty to prosecute those who have violated the law.

State courts have similarly recognized that the public has an interest in the disclosure of investigative records. In [Irvin v. Macon Telegraph Publishing Co.](#), 316 S.E.2d 449 (Ga. 1984), the Supreme Court of Georgia affirmed a trial court’s decision holding that records of an investigation were subject to disclosure. The court quoted from an earlier opinion in which it had stated: “Generally, the public records that are prepared and maintained in a current and continuing investigation of possible criminal activity should not be open for public inspection. On the other hand, and again, generally, public records prepared and maintained in a concluded investigation of alleged or actual criminal activity should be available for public inspection.”

316 S.E.2d at 452 (quoting [Houston v. Rutledge](#), 229 S.E.2d 624 (Ga. 1976)). The court noted that members of the public have an interest in having “information openly available to them so that they can be confident in the operation of their government,” and in ensuring that “the conduct of those public employees who investigate the suspects is open to public scrutiny.” 316 S.E.2d at 452.²¹ See also [Donrey of Nevada, Inc. v. Bradshaw](#), 798 P.2d 144, 148 (Nev. 1990) (public has right to inspect report generated by investigation into dismissal of criminal charges for contributing to the delinquency of a minor); [Cornell University v. New York Police Dep’t](#), 544 N.Y.S.2d 356 (Sup. Ct. App. Div. 1989) (university brought action against city police department, seeking to discover documents pertaining to investigation of sexual assault by security guard against student; records held subject to disclosure).

This recognition of the public’s interest has been echoed by the Alaska Supreme Court, although in the context of a civil suit against public employees, rather than a request for public information. In [Jones v. Jennings](#), 788 P.2d 732 (Alaska 1990), a civil rights litigant sought access to the personnel files of the defendant police officers and to the records documenting the department’s internal investigations of complaints filed by citizens. In considering whether the officers’ right of privacy under the constitution compelled confidentiality of the records, the supreme court noted:

The cornerstone of a democracy is the ability of its people to question, investigate and monitor the government. Free access to public records is a central building block of our constitutional framework enabling citizen participation in monitoring the machinations of the republic. Conversely, the hallmark of totalitarianism is secrecy and the foundation of tyranny is ignorance.

*10 *Id.* at 735 (footnote omitted). Ultimately, the court concluded in *Jennings*: “We find the public policy considerations of openness, free access to the workings of government, insuring the effective operation of our judicial system, and preservation of our democratic ideals compelling.” *Id.* at 739 (footnote omitted).

We believe that the balancing of competing interests involved when an investigation does not result in charges being filed lends itself to three categories. If the charge that was investigated carries a strong social stigma, as do the offenses of sexual assault or sexual abuse, then the presumption should be in favor of nondisclosure to protect the suspect’s (and in large measure also the victims’) rights of privacy. At the other end of the spectrum, if the charges are relatively minor, such as traffic offenses or traffic accident cases, the presumption should be in favor of disclosure, which is what the law requires in the absence of an identifiable exception. Cases in between these two extremes should turn upon the probable truthfulness of the allegations. Note, however,

that a suspect's status as a public figure, or allegations of a crime that involves a breach of the public trust, will likely slide the balancing scales in the direction of disclosure, even if the crime alleged involves a serious social stigma.

A.3(c)(i) Probable Truthfulness of Allegations

A growing number of courts have acknowledged that the probable truthfulness of the allegations against the suspect should be weighed when deciding whether the subject's privacy interests outweigh the public's interest in disclosure. Thus, in [Abramson v. Federal Bureau of Investigation](#), 566 F. Supp. 1371, 1375 (D.D.C. 1983), the court upheld the nondisclosure of "unverified derogatory information to the public." In [Napper v. Georgia Television Co.](#), 356 So.2d 640, 644 (Ga. 1987), the court stated: Various factors weigh on the question of whether personal privacy protects information from disclosure. Among other things, the court should consider whether the information is unsubstantiated and based on hearsay, whether it does not relate or relates only incidentally to the subject matter of the public record and the remoteness in time of the events referred to.

In [City of Tacoma v. Tacoma News, Inc.](#), 827 P.2d 1094, 1097 (Wash. App. 1992), a newspaper sought access to police department records regarding allegations of child abuse made by an anonymous hearsay informant against a mayoral candidate. The police and prosecutors concluded that the allegations could not be substantiated. The newspaper argued that because the suspect was a public figure, the information -- if true -- would be a matter of legitimate public concern. Furthermore, it argued that for purposes of analysis, the court should assume that the allegation was true. The court disagreed with this point, stating "the information here is surely of less concern to the public if it is false than if it is true." *Id.* at 1099. Beyond that, the court stated that if the "information remains unsubstantiated after reasonable efforts to investigate it, that fact is indicative though not always dispositive of falsity." *Id.* at 1099.

*11 In [Common Cause v. National Archives & Records Service](#), 628 F.2d 179, 183 n.10 (D.C. Cir. 1980), the court recognized that the public may have a significant interest in a full airing of potentially serious abuses by political candidates, and one factor in determining whether to release the reports was the reliability of the requested information, which would depend upon whether the witnesses had direct knowledge of the incidents, whether the events were recent or remote, and the nature and extent of any corroboration. 628 F.2d at 185-86.

The public's interest in disclosure of allegations is greatly reduced when those allegations are unreliable or probably untrue. We therefore conclude that the probable truthfulness of the allegations is an important factor when balancing the suspect's right of privacy against the public's interest in the disclosure of investigations in this middle category of offenses when charges are not filed. On the other hand, the suspect's expectation of privacy is greatly diminished, and disclosure is appropriate, when the lack of prosecution is the result of technical problems, such as an expired statute of limitation or an unavailable witness, rather than because of uncertainty as to the truth of the allegations.

A.3(c)(ii) When Suspect is Public Figure or Employee

Beyond the public's general interest in knowing how its government has handled an investigation, the public has a heightened interest in the disclosure of an investigation that did not result in charges being filed if the suspect is a "public figure," such as a government official or prominent citizen. In a case involving a request for access to the applications submitted for the position of chief of police, the Alaska Supreme Court has stated: "Public officials must recognize their official capacities often expose their private lives to public scrutiny." [City of Kenai v. Kenai Peninsula Newspapers](#), 642 P.2d 1316, 1324 (Alaska 1982) (quoting [Advisory Opinion on Constitutionality of 1975 PA 227](#), 242 N.W.2d 3, 19 (Mich. 1976)).²² These considerations may tilt the scales in favor of disclosing investigative reports into the activities of public officials.

In [Sullivan v. Veterans Administration](#), 617 F. Supp. 258 (D.D.C. 1985), the court concluded that the public's interest in an investigation into whether a Veterans' Administration official misused government property and funds outweighed the official's interests in keeping the matter confidential. The official had allegedly "borrowed" a government vehicle for his personal use,

then involved it in an accident, and thereafter used government funds for repairs to the vehicle he struck. The court weighed the competing factors in disclosure: “[T]he privacy interests at stake are limited to whatever embarrassment or reputational injury plaintiff might suffer as a result of being associated unwarrantedly with the alleged wrongdoing which is the subject of the report.... On the other side of the balance is the public's interest in knowing what public servants may be involved in wrongdoing.” *Id.* at 260.

*12 [T]he privacy interests of plaintiff, in his capacity as a federal employee, are diminished due to the public interest in knowing how public employees are performing their jobs -- ‘in order to hold the governors accountable to the governed.’ ... This is particularly true where, as here, the federal employee in question holds a high level position Furthermore, this is not a case where plaintiff was associated unwarrantedly with wrongdoing. While plaintiff continues to protest his innocence of any criminal wrongdoing, he has never denied the essential facts underlying the allegations made

Id. at 261.

In *Common Cause v. National Archives & Records Service*, 628 F.2d 179, 183 n.10 (D.C. Cir. 1980), the court recognized that the public may have a significant interest in a full airing of potentially serious abuses by political candidates. The case centered around a request for documents from the national archives that would reveal the identity of candidates to whom nineteen corporations admitted making unlawful campaign contributions. The trial court ordered the material withheld because it “might subject the alleged recipients to embarrassment and public obloquy without the benefit of formal judicial proceedings.” *Id.* at 180-81. On appeal, the government argued that in virtually every case it would constitute an unwarranted invasion of privacy to identify persons not subsequently charged with a crime or otherwise publicly associated with the events under investigation. *Id.* at 183. It further argued that the information sought in this case was in “most instances unsupported and uncorroborated.” *Id.* The court of appeals concluded that, although there were good policy reasons for protecting uncharged persons, it nonetheless was “not prepared to state this as the rule for every case and we do not know enough about the documents at issue here to make any more refined ruling than that.” *Id.* at 184. Factors that the court identified as important in deciding whether the records should be released included: the subjects' candidacy for public office, the public nature of the contributions at issue, and the reliability of the requested information. *Id.* at 185-86.

In *Jensen v. Schiffman*, 544 P.2d 1048 (Or. 1976), the sheriff's department had completed an investigation into the city police department that resulted in no charges being filed, and several citizens sought access to the report. When considering the subjects' privacy interests, the court stated: “As for invasion of privacy, the report deals primarily, if not exclusively, with the conduct of public servants (the members of the Reedsport Police Department) in the performance of their public duties.... [A]ny privacy rights that public officials have as to the performance of their public duties must generally be subordinated to the right of the citizens to monitor what elected and appointed officials are doing on the job.” 544 P.2d at 1052. Accordingly, the court ordered the documents to be released.²³

*13 Based on these authorities, in the case of an investigative report of a public figure who has not been arrested or charged, the balancing should be weighted toward disclosure. Other factors making disclosure appropriate include the probable truthfulness of the allegations, whether the person holds an elective or high-level appointed position, and whether the allegations relate to performance of official functions.

A.3(c)(iii) Access by Victims

The last factor that could have an impact on the balancing process used to determine whether to release investigatory reports where no charges were filed is whether the person requesting the records, such as a victim, has a specialized need for the records. Generally speaking, the particular interest of the person requesting the record is not entitled to consideration in the balancing process. As the United States Supreme Court stated in *United States v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 772, 109 S. Ct. 1468, 103 L. Ed. 2d 774, 795 (1989), when interpreting a provision of FOIA, “whether disclosure of a private document is warranted must turn on the nature of the requested document ... rather than on the particular purpose

for which the document is being requested.” Members of the press have no greater or lesser interest in obtaining records than members of the general public.

The more difficult question is what special rights, if any, a victim has to obtain a copy of not only his or her own statements but also other parts of an investigative file being held confidential to protect the suspect's right of privacy. A victim may have a civil claim against a suspect who cannot be prosecuted by the state²⁴ and may need the information contained in the investigative report to be able to assert that claim. We conclude that, even if the balancing process otherwise would result in the conclusion that the records should be withheld from disclosure, in this special situation, the victim should be provided with copies of the suspect's statements, if any, as well as the results of any tests performed on physical evidence. Statements of other victims and witnesses in these cases, however, should remain confidential and be produced only if the victim files a civil suit and makes a proper request under the civil rules of discovery.

A.3(c)(iv) Action to Take Before Disclosure is Made

In minor cases such as traffic offenses and traffic accidents, or routine misdemeanor offenses, reports can readily be disclosed to the public after a case is completed if the suspect is not charged. Naturally there must be some consideration of the exemptions discussed in sections A.1 and A.3(a) of this memorandum.

In other more serious cases, however, we suggest that when the department determines that disclosure will be made of a report in a case in which charges were not filed, because the public's interest outweighs the subject's right of privacy, the department should attempt to notify the subject to give that person an opportunity to seek a court order prohibiting the release of the records.²⁵ By so doing, the department may successfully avoid ringing a bell that cannot be unringed. The notification should be in writing and the person should be advised that the record will be released two weeks from the date of mailing unless the person contacts the department and states in writing that he or she will seek judicial relief. The person who requested the record should be advised that this procedure is being used and that there will be a two-week delay in responding to the request. If the department is unable to contact the subject because the subject's current address is unknown, the department should document its attempts to notify the subject and then release the record.

B. Drivers' Records

*14 AS 28.15.151, relating to drivers' records, provides as follows:

RECORDS TO BE KEPT BY THE DEPARTMENT. (a) The department may maintain a file of

- (1) every driver's license application, license or permit and duplicate driver's license issued by it;
- (2) every license that has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and
- (3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver, and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

....

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract or the original copy of the computer printed record of the driver's record as provided in (c) of this section.

....

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private.

By the terms of paragraph (d) of this statute, abstracts of driving records may be provided to the driver, a person designated by the driver, or to a governmental agency; otherwise, these records are made confidential by paragraph (f) and may not be released to the public.

B.1. Traffic Accident Reports

[AS 28.15.151](#) permits the department to maintain files that contain accident reports “required to be forwarded to the department under” AS 28. Such reports, which are required to be submitted under [AS 28.35.070](#) -- [28.35.100](#), are ordinarily one-page summaries written on departmental accident report forms. Although [AS 28.15.151](#) does not explicitly authorize any disclosure of traffic accident reports, these statutorily-required reports have historically been released upon request to those who were either involved in the accident or whose property was involved in the accident, or to their authorized agent, such as their attorney or insurance company.

This administrative interpretation of the regulation is reasonable and should be continued.²⁶ Other than these limited disclosures, however, these accident reports should not be released unless the requesting party has obtained a court order compelling production of the report.²⁷ These statutorily-required accident reports should, however, be distinguished from a police report summarizing the results of a criminal investigation arising out of a motor vehicle collision. Access to criminal investigative reports is discussed in section C of this memorandum.

B.2. Driver's License Photographs

At the time that a person obtains or renews a driver's license, two photographs are taken. One is placed on the person's license, while the other is retained by the state. This second photograph is a part of the license application under [AS 28.15.111](#) and it is thus a “confidential and private” record under [AS 28.15.151\(f\)](#). As such, it may not be released to the public or to the press except in those circumstances in which it is apparent that the person would authorize the release if the person could be asked. Thus, the department may release for publication the photograph of a person who has been kidnapped or is otherwise missing and believed to be in danger, when publication of the photograph may facilitate the subject's safe recovery. The department may not, however, release to the news media the photograph of a person who simply is the subject of a story; e.g., a person who has been involved in an accident or is the victim of a crime.

***15** It is our understanding that these “second” photographs are also used for photo line-ups by law enforcement agencies within the state. When a suspect's photograph is to be shown to witnesses for identification, it is common practice to create a “line-up” by including the photographs of persons with a similar appearance. The driver's license photographs are used for this purpose because they constitute the largest available source of photographs. This practice appears to be a permissible disclosure of confidential records to other governmental agencies because the disclosure “will be helpful in achieving an important public purpose,” i.e., the lawful apprehension of criminals, and “confidentiality can be maintained by the receiving agency,” i.e., the photographs will remain within the custody and control of the receiving agency. M. Knuth, *Inspection and Discovery of Public Records in Alaska*, 4 *ALASKA LAW REVIEW* 277, 296-97 (1987).²⁸

C. “Police Blotter” Information

A “police blotter” is a contemporaneous listing of arrests of adults, made by a law enforcement agency, that identifies the charges and the name of the person arrested. Courts have categorically ruled that police blotters are public records that must be made available for inspection. See, e.g., [State v. Lancaster Police Dep't](#), 528 N.E.2d 175, 178-79 (Ohio 1988); [Oklahoma](#)

[Publishing Co. v. Moore](#), 682 P.2d 754 (Okla. 1984); [Caledonian Record Publishing Co. v. Walton](#), 573 A.2d 296 (Vt. 1990); [Newspapers, Inc. v. Breier](#), 279 N.W.2d 179 (Wis. 1979).

In *Caledonian*, the court noted: “The general consensus is that an arrest is the result of the detection and investigation of crime, but is not part of such detection and investigations. Therefore, the courts have found arrest records to be public records and not included in the crime detection and investigation exception.” [573 A.2d at 300](#).

In *Breier*, the court ruled that “an arrest is a matter of legitimate public interest.” [279 N.W.2d at 186, 188](#). The court emphasized the importance in a free country of not having “secret arrests,” noting that “curbing abuse of the arrest power is only possible if the public can learn how that power is exercised.” *Id.* at 188. It continued:

Information concerning the operations of the police department in making arrests and the charges upon which arrests are made is vital to the democratic system; and presumptively, by statute, the records are to be open. While in some cases involving police functions there is an overriding public interest in preserving secrecy (e.g., in the investigation of pending or proposed criminal charges), no overriding public-interest concern is discernible when the executive act of arrest has been completed. An arrest is the exercise of the government's power to deprive an individual of freedom. The government is required to have probable cause whenever it deprives an individual of personal liberty, and it is offensive to any system of ordered liberty to permit the government to keep secret its reason for depriving an individual of liberty.

***16**

We hold as a matter of law that the harm to the public interest in the form of possible damage to arrested persons' reputations does not outweigh the public interest in allowing inspection of the police records which show the charges upon which arrests were made. The police “blotter” shall be open for inspection by the public

Id. at 189-90.

In accordance with these authorities, we conclude that police blotters, i.e., the contemporaneous listing of arrests of adults that identifies the name of the person arrested and the charges, should routinely be made available for inspection by the public to the extent that they are retained by and in the possession of the agency.²⁹ This is not to say that your department must create or retain such police blotters. As always, Alaska's public records statutes do not dictate what types of records must be kept by governmental agencies; instead, they only address the disclosure of records that an agency retains.

D. Criminal History Records

In contrast to police blotters, which courts have ruled are subject to disclosure,³⁰ “rap sheets,” or criminal history records, have been historically withheld from inspection by the public to protect the subject's privacy interests. The two types of records were distinguished by the court in *Breier* as follows:

The police “blotter” is an approximately chronological listing of arrests, recorded at the time of booking at the police station. A “rap sheet” is a record which the police department keeps on each individual with an arrest record. “Rap sheets” are filed in alphabetical order and purport to show on a single document all arrests and police contacts of an individual.

[279 N.W.2d at 186](#).

If one were to use the police “blotter” to seek information on arrests of a particular individual, it would be necessary to know the approximate date on which the arrest occurred. While the arrest list is useful to the news media in determining on a daily basis whether any arrests of legitimate public interest have occurred on a particular day, the arrest list is of little use to employers or credit agencies who seek to check the arrest records.

Id. at 182-83.³¹

The issue of whether criminal history records should be subject to disclosure to the public upon request reached the United States Supreme Court in 1989 in [United States v. Reporters Committee For Freedom of the Press](#), 489 U.S. 749, 109 S. Ct. 1468, 103 L. Ed.2d 774 (1989). The Court relied on several factors in concluding that disclosure would constitute an “unwarranted invasion of personal privacy” as that term is used in the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(B)(7)(C).³²

First, although the Court acknowledged that much of the information contained in a criminal history record, such as arrests and convictions, is “public information,” it agreed that this information enjoys “practical obscurity.” 103 L. Ed. 2d at 788. It stated, “Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.” Id. at 790.

*17 Next, the Court noted Congress's “careful and limited pattern of authorized rap-sheet disclosure,” which “evidence[s] a congressional intent to protect the privacy of rap-sheet subjects, and a concomitant recognition of the power of compilation to affect personal privacy that outstrips the combined power of the bits of information contained within.” Id. at 790-91.

Finally, the Court emphasized that the purpose of FOIA is to enhance the public's understanding of the operations or activities of the government. It stated:

In other words, although there is undoubtedly some public interest in anyone's criminal history, especially if the history is in some way related to the subject's dealing with a public official or agency, the FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse of the Government be so disclosed.

Id. at 796-97.³³ Ultimately, the Court ruled as follows:

[W]e hold as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no “official information” about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is “unwarranted.”

Id. at 800.

For the reasons given by the United States Supreme Court, we conclude that the routine disclosure of information from the Alaska Public Safety Information Network (APSIN)³⁴, apart from those disclosures authorized by statute, is prohibited by the subject's statutory and constitutional rights of privacy.³⁵

As previously noted, these rights of privacy are not absolute; instead, they must be balanced against the public's interest in the information. Thus, for example, the public's interest in the apprehension of fugitives and wanted persons is sufficiently great that the department can disclose information from APSIN about these persons to promote their arrest even before the effective date of AS 12.62.160(a)(3).³⁶

In most instances, however, the legislature performs the necessary balancing test and through its enactments determines the circumstances in which the public's interest in information is greater than the subject's right to privacy. Until 1995, the only type of information specifically authorized by the legislature to be disclosed is records of convictions for employees who work with dependents. AS 12.62.035.³⁷

Commencing on July 1, 1995, several new statutes relating to the release and use of criminal justice information will become effective. [AS 12.62.160](#) -- [12.62.180](#). Under [AS 12.62.160](#), criminal justice information will remain confidential and exempt from disclosure under AS 09.25 except to the extent that disclosure is authorized in these sections. Two straightforward exceptions allow disclosure of information requested by the subject of the information ([AS 12.62.160\(b\)\(11\)](#)) and allow disclosure of information as necessary to comply with a court order compelling the disclosure ([AS 12.62.160\(b\)\(2\)](#)).

***18** The majority of the remaining exceptions in [AS 12.62.160\(b\)](#) reflect a common-sense application of the public interest balancing test; e.g., (b)(1) information necessary to avoid imminent danger to life or extensive damage to property; (b)(3) information commonly used to identify, locate or apprehend fugitives or to recover stolen property; (b)(4)-(6) governmental sharing of information for law enforcement purposes; and (b)(10) past conviction information relating to a serious offense, which may be provided to an interested person to determine whether the subject should be granted supervisory or disciplinary power over a minor or dependent adult.

The remaining exceptions, however, will constitute a rather significant change from current law and practice in Alaska. Exception (b)(8) will allow “current offender information” to be released unless it would “unreasonably compromise the privacy of a minor or vulnerable adult.” Exception (b)(9) will allow “past conviction information” to be released if less than 10 years has elapsed from the date of unconditional discharge to the date of the request. Thus, any conviction information will be subject to disclosure if it is not too remote in time and current arrest information will also be subject to release unless it involves a minor or a vulnerable adult. Regulations implementing these sections have yet to be adopted.

E. Records Relating to Juveniles

[AS 09.25.120\(2\)](#) requires that juvenile records not be released to the public unless “authorized by law.” In 1994 the legislature amended [AS 47.10.090](#) and enacted [AS 47.10.093](#) to clarify what disclosures may be made of juvenile records. [AS 47.10.090](#) now only addresses juvenile court records; other records relating to juveniles are governed by [AS 47.10.093](#).

In accordance with [AS 47.10.093](#), records relating to juveniles may be disclosed if they fall within one of the statute's express exceptions. Subsection (b) relates to the disclosure of records by a state or municipal agency and allows disclosure of information to the police “as may be necessary for a specific investigation being conducted by that agency or for disclosures by that agency to protect the public.” Thus, absent a statutory change, law enforcement agencies cannot be granted routine access to Department of Health and Social Services' records - - computerized or otherwise -- relating to juveniles. Instead, access must be necessary for a specific investigation or so that the law enforcement agency is able to make an authorized disclosure to protect the public safety.

Subsection (c) addresses what disclosures may be made by state or municipal law enforcement agencies. The five specific disclosures authorized are: (c)(1) information for preliminary Title 47 investigations; (c)(2) information to the public about an offense if the minor is not identified by the disclosure; (c)(3) information to school officials about a case as may be necessary to protect the safety of students and staff; (c)(4) information to the public as necessary to protect its safety; and (c)(5) information to a victim as necessary for civil litigation or insurance claims. These are the only disclosures that can be made by law enforcement agencies. Furthermore, if the documents are “records or information compiled for law enforcement purposes,” then the limitations of [AS 09.25.120\(6\)](#) apply, as well (e.g., no disclosure if it would interfere with an ongoing investigation or criminal case, etc.).

F. Miscellaneous Records

***19** Finally, there are a few other, miscellaneous types of records that you have asked us to address briefly.

F.1. Investigations in Administrative Proceedings

Records relating to non-personnel investigations for the purpose of administrative proceedings should be treated the same as records relating to investigations that may result in judicial proceedings. Thus, before the administrative hearing is held, the records generally are not subject to disclosure. [National Labor Relations Bd. v. Robbins Tire & Rubber Co.](#), 437 U.S. 214, 57 L. Ed. 2d 159 (1978) (administrative agency need not release its records before concluding a hearing, considered to be an enforcement proceeding). Conversely, any records relied upon in the formulation of the agency's final administrative decision are generally subject to disclosure, except as outlined in this memorandum.

F.2. Grand Jury, Pre-Sentence and Mental Health Reports

Next, there are some records that are not produced by law enforcement agencies, but that may become a part of an agency's files during the course of an investigation. These include grand jury reports, pre-sentence reports, and various mental health records.

The release of grand jury records and reports is governed by Alaska [Criminal Rule 6.1](#), which makes disclosure a decision for the judiciary. If a judge orders the release of the record, it becomes a public document; otherwise, the records remain confidential.

The release of pre-sentence reports is governed by Alaska [Criminal Rule 32.1\(b\)](#). This rule imposes significant restrictions on the release of pre-sentence reports. Generally speaking, such reports may only be released to the judge, an attorney for the state, and the attorney for the defendant. Further disclosure requires a court order or statutory authorization, except that copies may be provided to agents for the attorneys, to reviewing courts, and to “agencies having charge of the defendant's rehabilitation.” Alaska Crim. R. 32.1(b)(1).

The release of court-ordered psychiatric reports is governed by [AS 12.47.070\(e\)](#) and [Criminal Rule 16\(c\)\(5\)](#), both of which specify only that a report shall be filed with the court and made available to counsel for the state and for the defendant. We believe that these reports constitute privileged medical records that should not be disclosed to the public. Thus, even if the report includes a statement by the defendant that might otherwise be subject to disclosure, the statement should be withheld unless the requester has obtained a court order compelling the disclosure.

In addition, other statutes prohibit the release of other types of mental health records and the records of alcohol commitments. For example, see [AS 47.30.360](#) (records and reports relating to mental health commitments to be kept confidential); [AS 47.30.590](#) (records and information about recipients of mental health services to be “safeguarded”); [AS 47.37.210](#) (records of treatment facilities for alcoholics and intoxicated persons to be kept “confidential and privileged to the patient”). See also [AS 47.37.170\(i\)](#), which prohibits the making of records of arrest for persons taken into protective custody for being incapacitated by alcohol.

F.3. Personnel Records

***20** The disclosure of personnel records is governed by [AS 39.25.080](#), providing:
[AS 39.25.080](#). PUBLIC RECORDS. (a) State personnel records, including employment applications and examination materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

- (1) the names and position titles of all state employees;
- (2) the position held by a state employee;
- (3) prior positions held by a state employee;
- (4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee; and

(6) the compensation authorized for a state employee.

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

Thus, except as to the employee, who may examine his or her file or authorize its release to another person, only those limited types of information identified in [AS 39.25.080](#) may be disclosed to the public. It should be noted that the statute does not merely protect a person's personnel file, but is broader and makes all personnel records confidential and not subject to disclosure. This would include a number of records that may not appear in the official department personnel file, such as records relating to financial, family, or medical matters, as well as records of administrative investigations or inquiries. Whether such records may be discoverable because they are relevant to specific litigation should be determined on a case-by-case basis in the context of that litigation. Cf. [Jones v. Jennings, 788 P.2d 732 \(Alaska 1990\)](#).

F.4. Records in Aid of Research Projects

Finally, you have indicated that you also receive various requests for access to information for research projects undertaken by students or public service organizations. Generally, these requests should be treated the same as requests made by the public; in particular, you should avoid permitting records to be copied that contain the addresses and telephone numbers of victims or witnesses. There may be circumstances, however, in which it is appropriate for you to authorize the inspection of records that would not be disclosed to the general public. Although not directly applicable, [6 AAC 60.090\(c\)-- 60.090\(g\)](#), which governs "research use of criminal justice information," may provide useful guidelines for the disclosure of information for research purposes. Also note that [AS 12.62.160\(b\)\(7\)](#), which will become effective on July 1, 1995, specifically authorizes "criminal justice information" to be released "in aggregate form" for criminal justice research, subject to conditions that assure "the security of the information and the privacy of individuals to whom the information relates."³⁸

HANDLING OF REQUESTS AND COURT ORDERS

*21 The mechanics involved in requests for records under the public records act are governed by regulations set out in [6 AAC 95](#). In addition, as discussed in section A.3(c)(iv) of this memorandum, we have suggested a special procedure for notifying the subject of a report when the department determines that disclosure will be made in a case in which charges were not filed, because the public's interest outweighs the subject's right of privacy.

If, however, it is determined that a document cannot be released without a court order, the next issue that must be resolved is what type of order will suffice. Two types that will almost always be sufficient are (1) an order prepared and signed by a judge or issued orally from the bench in a particular proceeding, and (2) a subpoena duces tecum requiring appearance at a court hearing. If compliance with the order or subpoena to a court proceeding seems inappropriate, e.g., the disclosure could impede an ongoing investigation, an attorney at the Department of Law should be contacted to review the matter.

The only other type of order likely to be used is a subpoena duces tecum that commands the recipient to appear at a deposition. These subpoenas should be considered sufficient if all of the suspects and victims are parties to the case and if the subpoena is accompanied by documentation -- such as a notice of deposition -- showing that the adverse party or parties have been notified of the deposition. In these instances, the parties will be able to assert and protect their own rights of privacy. Once again, however, if disclosure of the record seems inappropriate for some reason, such as interference with an ongoing investigation, an

attorney at the Department of Law should be contacted for review. If the circumstances are such that the Department of Public Safety can comply with the subpoena, the person to whom the subpoena is directed should feel free to contact the attorneys for all parties and explore whether the documents can be provided without the person appearing at the deposition. This may be an efficient and welcome option for all of the parties involved.

If not all of the victims or suspects are involved in the litigation, the Department of Public Safety should attempt to notify the unnamed victims or suspects to allow them the opportunity to assert their interests in confidentiality. A Department of Law attorney should be contacted to prepare an objection to the subpoena under [Civil Rule 45](#), indicating what course of action is being taken by the Department of Public Safety and when the department will likely be able to comply with the subpoena. If the Department of Public Safety is unable to contact one or more of the victims or suspects because their location is unknown, references to these persons should be redacted from the reports unless and until a specific order by a judge is obtained by the requesting party compelling the disclosure.

SUMMARY

The first step when a request for records is received is to determine whether the requestor is involved in litigation, or is representing someone involved in litigation, with the state or one of its agencies. If so, the request must be denied. The person should be advised that the records can only be produced in response to a subpoena or discovery order.

***22** If the person is not involved in litigation with the state, the next step is to determine what type of record is being sought. Drivers' records are "confidential and private" in [AS 28.15.151](#). We conclude, however, that traffic accident reports may be released to the subject of the report or to the subject's agent, such as an attorney or insurance adjuster.

The disclosure of investigative reports is governed by [AS 09.25.120\(6\)](#). These reports are generally subject to disclosure, except for:

1. reports relating to juvenile offenses;
2. information about confidential sources, confidential techniques and guidelines, or information that could endanger a person's safety;
3. pending investigations or criminal cases, although victims, witnesses and suspects may review their own statements;
4. reports from a closed investigation in which charges were filed and relate the identity of a victim of a sex offense or identify a victim or witness who reasonably expected to remain confidential or who is now deceased or relate to a very old case that does not involve a public figure; the report should be released if the identities of victims and witnesses can be protected by removing their names and any other information that could lead to their identities being disclosed;
5. reports from a closed investigation in which charges were not filed and the charges investigated carry a significant social stigma (e.g., sexual assault or rape) or the truthfulness of the allegations is in serious doubt; however, the the suspect's status as a public figure can tilt the analysis toward disclosure. If the department concludes that it is appropriate to release all or part of an investigative report in which charges were not filed, we recommend that the department first notify the subjects of the report so that those persons may seek a court order prohibiting disclosure on the basis that it would violate their right of privacy.

With other types of law enforcement information, "police blotters" should be consistently released to the public, while access to criminal history records should be denied until the effective date of [AS 12.62.160](#) in July 1995, except in the narrow circumstances enumerated in this memorandum. Release of juvenile records is governed by [AS 47.10.093](#). Investigative reports for non-personnel administrative proceedings are comparable to investigations that may result in judicial proceedings and the same considerations apply. The disclosure of grand jury, pre-sentence and mental health reports are governed by statutes and

court rules, which must be consulted as appropriate. Similarly, the release of personnel information is governed by statute. Research requests should generally be treated the same as other requests, although [AS 12.62.160](#) will change this and exceptions may be allowed if sufficient assurances of confidentiality can be made.

Finally, we conclude that a specific court order or a subpoena duces tecum commanding the witness to appear at a court hearing with department records will always satisfy the requirement for a court order authorizing the disclosure. A subpoena duces tecum to appear at a deposition should be honored only if all of the parties involved in the underlying criminal matter (e.g., suspect and victims) are parties to the new litigation. If not, the unnamed parties should be notified by the Department of Public Safety, while the Department of Law files an objection to the subpoena.

***23** The conclusions in this memorandum have not been set out in any comprehensive way before now, and are likely to generate a number of questions as your department proceeds to apply these guidelines to specific records. As questions arise, members of your department should not hesitate to contact the Department of Law for specific advice.

Very truly yours,

Bruce M. Botelho
Attorney General

Footnotes

- 1 This opinion was researched and written by Assistant Attorney General Margot O. Knuth; final edits were provided by Chief Assistant Attorney General Dean J. Guaneli.
- 2 For purpose of this memorandum, the term “general public” means anyone who is not seeking the records in aid of pending litigation involving the state or one of its agencies, and it thus includes reporters.
- 3 There has been uncertainty as to whether this “litigation exception” should be interpreted to apply only to records related to on-going litigation against the state. It appears that this was the legislature's intent when enacting the statute; thus, the Attorney General stated in his bill review letter to Governor Cowper that [A.S. 09.25.122](#) “is consistent with current [6 AAC 95.150](#) and does not change existing law.” Letter from General Baily to Governor Cowper (883-90-0175); June 18, 1990). Former [6 AAC 95-150](#) provided:
If the requestor or the requestor's principal is in litigation with an agency in a judicial or administrative forum, disclosure of any agency's records relevant to that litigation or reasonably likely to lead to the discovery of relevant evidence is governed by the rules or orders in that forum and not by this chapter. (Emphasis added.)
Although [AS 09.25.122](#) does not contain the same limiting language (“with an agency”), and it is ““a fundamental principle of statutory interpretation ... that a statute means what its language reasonably conveys to others,”” [Flisock v. State](#), 818 P.2d 640, 643 (Alaska 1991) (quoting [North Slope Borough v. Sohio Petroleum Corp.](#), 585 P.2d 534, 540 (Alaska 1978)), nonetheless the Alaska Supreme Court has rejected blind adherence to the “plain meaning rule” for statutory construction, [North Slope Borough v. Sohio Petroleum Corp.](#), 585 P.2d at 540 & n.1. Considering all of the surrounding circumstances, we conclude that [AS 09.25.122](#) creates an exception to the public records act for records sought in conjunction with litigation involving the State of Alaska. As for the possible applicability of this statute to municipalities, see [City of Kenai v. Kenai Peninsula Newspapers](#), 642 P.2d 1316, 1318-23 (Alaska 1982).
- 4 Paragraph 6, which was added by the legislature in 1990, tracks Exemption 7 of the Freedom of Information Act, [5 U.S.C. § 552\(b\) \(7\)](#), which exempts from disclosure:
[R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information
(A) could reasonably be expected to interfere with enforcement proceedings,
(B) would deprive a person of a right to a fair trial or an impartial adjudication,
(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness,
(D) could reasonably be expected to disclose the identity of a confidential source,
(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions,
(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law, or
(G) could reasonably be expected to endanger the life or physical safety of an individual.

- 5 Apart from [AS 09.25.120](#), there are currently five statutes requiring or authorizing the withholding of police records: [AS 28.15.151](#) (drivers' records and traffic reports), see section B of this memorandum; [AS 12.62.035](#) (conviction records of an employee with authority over children), see note 37 of this memorandum; [AS 12.62.030](#) (records of a criminal justice information system funded by a certain federal agency), see note 34 of this memorandum; and [AS 12.62.160](#) (release of "criminal justice information." See section D of this memorandum.
- 6 The most frequently applicable constitutional provision is [Article I, section 22, of the Alaska Constitution](#), protecting the right of privacy. This provision require law enforcement records to be withheld from public inspection when the subject's interest in personal privacy outweighs the public's interest in disclosure. See section A.3 of this memorandum.
- 7 [Doe v. Alaska Superior Ct., Third Jud. Dist. 721 P.2d 617 \(Alaska 1986\)](#) (executive privilege doctrine explained).
- 8 If other evidentiary privileges, chief among them being the attorney-client privilege, are used to justify nondisclosure, that should be decided on a record-by-record basis upon advice from the Department of Law.
- 9 In [City of Kenai v. Kenai Peninsula Newspapers, 642 P.2d 1316, 1323-24 \(Alaska 1982\)](#), the Alaska Supreme Court recognized a common law "public interest" exception to the public records act, whereby records may be withheld from disclosure whenever a demonstrable need for confidentiality outweighs the public interest in disclosure. See also [Municipality of Anchorage v. Daily News, 794 P.2d 584, 590 \(Alaska 1990\)](#) ("In the absence of an express exception to the disclosure laws, a balance must be struck between the public interest in disclosure on the one hand, and the privacy and reputational interests of the affected individuals together with the government's interest in confidentiality on the other").
- 10 As discussed in section F.1 of this memorandum, the exemption also applies to reports of investigations for administrative proceedings.
- 11 Some states' statutes, however, exempt all investigative reports from disclosure. See, e.g., [Sullivan v. City of Pittsburgh, 561 A.2d 863 \(Pa. Commonwealth 1989\)](#), which affirmed the denial of a victim's request for the investigative report regarding her assault, even though no action has been taken in the matter for 18 months. The court specifically contrasted the language of its laws with that of the federal act, stating: "[W]hile we deeply sympathize with the victim of a criminal act who wishes to be assured that all possible steps are being taken by law enforcement officials to solve the crime we cannot conclude that our Right-to-Know Act provides any relief." [561 A.2d at 866](#).
- 12 [AS 09.25.120\(2\)](#) specifies that "Every person has a right to inspect a public record in the state ... except ... records pertaining to juveniles unless disclosure is authorized by law." See [As 47.10.090](#) and [AS 47.10.093](#), relating to juvenile records, discussed in section E of this memorandum.
- 13 [Article I, section 22, of the Alaska Constitution](#) provides: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." This statute, as well as [AS 12.62.035](#) (relating to conviction records for those working with children), and [AS 28.15.151\(f\)](#) (relating to driving records and traffic reports), may be considered legislative implementations of the right of privacy.
- 14 Most of the cases cited in this section focus on the FOIA exception provided for "confidential sources," rather than on the exception protecting the subject's right of privacy. But see [Lieverman v. United States Dept of Justice, 597 F. Supp. 84, 88 \(E.D. Pa. 1984\)](#) (even if there is not blanket exemption for names of all third parties mentioned in FBI investigatory records, all such persons have privacy interests that can be protected after court has balanced privacy interest against public interest and disclosure of names). There is an analytical difference between the two exceptions, but as a matter of practice, Alaska's exceptions for confidential sources and for unwarranted invasions of privacy both protect from disclosure the identity of witnesses of victims and the information they have provided when its disclosure could reveal their identities.
- 15 See also [Brant Construction Co. v. United States EPA, 778 F.2d 1258 \(7th Cir. 1985\)](#), holding that even an unsolicited letter could be considered a confidential source depending upon the circumstances; in this case, the author's allegations regarding a contractor's illegal and improper activities suggested an expectation of confidentiality.
- 16 Other courts have reached different conclusions when considering this issue. Some have required an explicit promise of confidentiality. See [Ragusa v. New York State Department of Law, 578 N.Y.S.2d 959, 964 \(Sup. Ct. 1991\)](#) ("That future prospective witnesses might be discouraged from cooperating with the Attorney General in the face of promises not kept is quite irrelevant; for no promises have been alleged making such a speculation a matter of no consideration in this case"). Others have required a showing that confidentiality was expected even if not promised. See [Faulkner v. Del Giacco, 529 N.Y.S.2d 255, 257 \(Sup. Ct. 1988\)](#) ("In this case, the statements were given by the alleged victims wherein they identified their alleged assailants. There is no indication that confidentiality was promised or expected"). Yet others have been willing to invariably imply a promise of confidentiality. See [Dow Jones & Co. v. Department of Justice, 917 F.2d 571, 577 \(D.C. Cir. 1990\)](#) ("Since the FBI typically promises confidentiality and rarely - if ever- will a source not desire it, only the starkest and most conclusive evidence of non-confidentiality will rebut the presumption" of confidentiality); [Powell v. United States Dep't of Justice, 584 F. Supp. 1508, 1528 \(N.D. Cal. 1984\)](#) (those who supply information about criminal suspects' conduct do so under implied assurance of confidentiality).

- 17 An additional argument that may be given some weight by the court is that disclosure will have a chilling effect on the willingness of other people to cooperate with future investigations. [Hawkins v. Kurlander](#), 469 N.Y.S.2d 820 (Sup. Ct. App. Div. 1983); [Tacoma News v. Tacoma-Pierce Health Dep't](#), 778 P.2d 1066, 1070 (Wash. App. 1989), review denied, 785 P.2d 825 (Wash. 1990) (“Disclosing the identities of sources will discourage potential sources from providing important information in the future, and will therefore frustrate the investigative process”). But see [Scott v. County of Nassau](#), 252 N.Y.S.2d 135, 138 (Sup. Ct. 1964) (“Here no informer is involved and the criminal prosecution is at an end. The only public interest in preventing disclosure, therefore, would be to encourage frankness in the making of official reports, and that is not sufficient reason to deny the disclosure to which plaintiffs are otherwise entitled”).
- 18 Courts have disagreed on the legal significance of a victim's or witness's willingness to testify at trial if that should become necessary. The United States Supreme Court left this issue unresolved in [Landano](#). In [Irons v. FBI](#), 811 F.2d 681, 686 (1st Cir. 1987), the court held that a willingness to testify does not amount to a waiver of confidentiality. It noted that “it is the subjective intent of the informer - whether or not he intended to abandon the safeguards of the exemption - which controls; the mere (uncommunicated) fact that the agency considers him to be a likely witness is beside the point.” 811 F.2d 681, 686 (1st Cir. 1987). In [Cornell University v. N.Y. Police Dep't](#), 544 N.Y.S.2d 356, 358 (Sup. Ct. App. Div. 1989), however, the court relied on the possibility that the witness could be called at trial as evidence that any expectation of confidentiality was unreasonable.
- 19 As to the APSIN computer database of criminal history records, however, see section D of this memorandum.
- 20 It has not, however, been held to extend to commercial interests by federal courts or state courts interpreting similar exceptions. See [Ragusa v. New York State Department of Law](#), 578 N.Y.S.2d 959, 963 (Sup. Ct. 1991) (rejecting claim that records should be held confidential because they contained trade secrets or economically sensitive information); [Tacoma News v. Tacoma-Pierce Health Dep't](#), 778 P.2d 1066, 1069 (Wash. App. 1989), review denied, 785 P.2d 825 (Wash. 1990) (rejecting claim that ambulance company's “right of privacy” would be invaded by disclosure of an investigation conducted against it because “this particular exemption is commonly understood to pertain only to the intimate details of one's personal and private life”; court concluded that disclosure of the investigation “might cause inconvenience or embarrassment to the service under investigation and the sources of information, but will not invade any person's privacy”). See also [Cohen v. Environmental Protection Agency](#), 575 F. Supp. 425, 429 (D.D.C. 1983) (court held that privacy exception is inapplicable to information about professional or business activities and thus identities of those who received notice letters from the EPA regarding necessary toxic waste dump cleanups were not exempt from disclosure).
- 21 It should be noted, however, that the public's interest in disclosure was heightened in the [Macon Telegraph](#) case because the suspects were governmental employees, whose conduct must be “open to public scrutiny.” 316 S.E.2d at 452.
- 22 See also [South Coast Newspapers v. City of Oceanside](#), 206 Cal. Rptr. 527 (Cal. App. 1984), in which a newspaper sought disclosure of the police reports generated in an investigation into allegations that a high school principal had failed to report an incident of child abuse, following the local prosecutor's decision not to charge the principal. The defending city argued that the records were exempt from disclosure as “investigative reports.” The California court of appeals rejected this argument, concluding that the “investigatory records exemption is not an absolute exemption.” 206 Cal. Rptr. at 531. Turning next to the principal's claim of privacy, the court found his status as a “public figure” dispositive. It accordingly ruled that the newspaper was entitled to inspect and copy the records.
- 23 See also [Providence Journal Co. v. United States Dept of Army](#), 781 F. Supp. 878 (D.R.I. 1991) (public's interest in knowing of public servant's possible criminal wrongdoing outweighed suspects' - Rhode Island Army National Guard officials -- interest in privacy). But see [Ray v. United States Dep't of Justice](#), 778 F. Supp. 1212 (S.D. Fla. 1991), in which the court concluded that revealing information concerning an official investigation of a government employee (as INS examiner) could unnecessarily damage his good standing in community; [Bast v. United States Dep't of Justice](#), 665 F.2d 1251, 1255 (D.C. Cir. 1981) (while public has interest in knowing whether the Department of Justice properly exercised its prosecutorial discretion, government officials do not surrender all rights to personal privacy when they accept a public appointment).
- An additional factor at issue when the suspect is a public figure or employee is the possibility that the law enforcement agency was biased in the suspect's favor. In [City of Tacoma v. Tacoma News, Inc.](#), 827, P.2d 1094, 1100-01 (Wash. App. 1992), a newspaper was attempting to obtain copies of an investigative report, arguing in part that the public had a significant interest in ensuring that the investigation had been conducted properly. The court found that factor unpersuasive in the particular case, stating as follows:
The Tribune argues that the records should be released because the public has a legitimate right to know how diligently the police investigated the information provided by the anonymous informant, and that that is particularly important if in fact the information pertains to a candidate who was being supported by the police union. While we do not rule out the possibility this type of argument might override the need for privacy in a particular case, it is not persuasive here. The records give no hint of a less than adequate investigation.... [A]ny inference that police bias affected the outcome is substantially negated by the fact that three other professional agencies reviewed the case and reached the same conclusion as the police.
- In [Stern v. Federal Bureau of Investigation](#), 737 F.2d 84, 92 (D.C. Cir. 1984), however, the court noted that the public has a significant interest in knowing that a government investigation is comprehensive, that a report thereof is accurate, that disciplinary measures

are adequate, and that those who are accountable are dealt with in an appropriate manner. Weighing the competing factors in the case before it, the court ruled that the public's interest in the disclosure of the name of an FBI employee investigated for knowingly covering-up illegal surveillance activities exceeded the employee's privacy interests.

24 The inability to prove the case beyond a reasonable doubt or the lapse of the applicable statute of limitation for the criminal offense are both situations in which it is possible for a civil claim, but not a criminal case, to be pursued.

25 In *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d at 584, 591 n.13 (Alaska 1990), the supreme court indicated that it is "desirable" for the subject of a public record to be notified of its pending release and thus be given the opportunity to present argument to a court as to whether disclosure would constitute an unwarranted invasion of the subject's privacy.

26 We believe that this is the proper interpretation of the language used in AS 28.15.151(f), which specifies that these records are "confidential and private." In particular, the use of the term "private" suggests that the legislature's concern was with disclosure to the general public, rather than disclosure to the involved parties. See M. Knuth, *Inspection and Discovery of Public Records in Alaska*, 4 ALASKA LAW REVIEW 277, 289 (1987). Laws authorizing the withholding of public records are to be interpreted narrowly so as to allow greatest disclosure possible. *Id.* (citing *Doe v. Alaska Superior Court*, 721 P.2d 617, 622 (Alaska 1986)).

27 In 1978 we noted some uncertainty as to whether traffic reports were to be kept confidential under this statute because, as originally, enacted, it contained a reference to a nonexistent chapter 26 in title 28, 1978 Inf. Op. Att'y Gen. (Oct. 13; 663-78-0000). That reference has since been deleted, resulting in AS 28.15.151 simply declaring "confidential and private" all "information and records under this section," which includes accident reports.

Although Alaska has foresworn blind allegiance to the "plain meaning" rule of statutory interpretation, a party asserting a different meaning bears a heavy burden of demonstrating a contrary legislative intent. *Zoerb v. Chugach Electric Ass'n*, 798 P.2d 1258 (Alaska 1990); *Helton v. State*, 778 P.2d 1156 (Alaska 1989). There is no longer any evidence indicating that the legislature intended accident reports to be other than "confidential and private." Thus, to the extent that the 1978 memorandum advised that AS 28.15.151(f) "should not be interpreted to prevent the release of these accidents reports," we specifically overrule that advice. See also, 1988 Inf. Op. Att'y Gen. (Mar 30; 663-88-0232).

As to the adequacy of a subpoena to obtain this type of record, see section in this memorandum entitled "Handling of Requests and Court Orders",

28 There is no statute or regulation specifically governing use of these photographs to identify to the public a wanted suspect, but we believe that this practice would be approved by Alaska's courts under a "necessity" analysis.

29 We note that 6 AAC 60.070(g)(2), applicable to LEAA-funded information systems (see note 34 of this memorandum), authorizes the disclosure of police blotters, which it identifies as the "original records of entry maintained by criminal justice agencies, if the records are routinely organized on a chronological ... basis.

30 See section C of this memorandum.

31 See also *Houston Chronicle Publishing Co. v. Houston*, 531 S.W.2d 117 (Tex. Civ. App. 1975), *aff'd*, 536 S.W.2d 559 (Tex. 1976) (police blotter must be made available to the public, while rap sheets must be kept confidential).

32 AS 09.25.120(6)(c) uses the same language at this FOIA exception.

33 Also, although not specifically relied upon as a factor, the Court noted that, because of their volume, rap sheets "are sometimes incorrect or incomplete and sometimes contain information about other persons with similar names." 103 L. Ed. 2d at 782.

34 The Criminal Justice Information Systems Security and Privacy Act, set out in chapter 62 of title 12, by its own terms only restricts access to criminal justice information contained in systems funded by the federal Law Enforcement Assistance Administration (LEAA). AS 12-62.070(3). Although the state's initial computerized databank of individuals' criminal histories -- the "Alaska Justice Information System" (AJIS) -- was funded by LEAA, the system in current use -- the "Alaska Public Safety Information Network" (APSIN) -- is not. 1986 Inf. Op. Att'y Gen. (663-86-0479); Dec. 10) at 1-3. Thus, although the statutory restrictions apply to systems that are still funded at least in part by LEAA (which include the Prosecutor's Management Information System and the Offender-Base State Correctional Information System), the Act's restrictions on disseminating criminal history records from AJIS are not directly applicable to criminal history records contained in APSIN. Nonetheless, the restrictions were developed to protect individuals' rights of privacy. They accordingly may serve as useful guidelines for the dissemination of APSIN information.

35 We continue to conclude that the Division of Family and Youth Services, Department of Health and Social Services, may be granted access to adult criminal arrest records for the purposes of conducting background investigations of prospective foster parents, day care operators, or others who work with children. 1989 Inf. Op. Att'y Gen. (Jan. 1; 663-89-0142).

36 See 6 AAC 60.070(g), which authorizes the release of this type of information from LEAA-funded systems.

37 This statute requires the department upon request to provide to an interested person:
the records of all felony convictions, convictions involving contributing to the delinquency of a minor, and convictions involving any sex crimes of a person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult.

The department is also required to notify the person who is the subject of the request and provide that person with a copy of the information that will be released. Although located within chapter 62 of title 12, AS 12.62.035 relates not to federally-funded record systems, but instead to any conviction records held by the Department of Public Safety, e.g., APSIN records. This statute will be repealed on July 1, 1995, at which time a new statute ([AS 12.62.160](#)) covering the same issue will become effective.

38 See [AS 12.62.160](#), set out in section D of this memorandum.

1994 WL 804488 (Alaska A.G.)

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HAINES BOROUGH, ALASKA
P.O. BOX 1209 • HAINES, AK 99827
Phone 907.766.2231 (fax) 907.766.2716

Memo

Date: 08/08/13
To: Mark Earnest, Borough Manager
CC: Julie Cozzi, Borough Clerk
From: Brooks Chandler, Borough Attorney

A handwritten signature in black ink that reads "Brooks Chandler".

RE: Personnel Records Ordinance

As requested, we have prepared a proposed ordinance designed to specify what items in an employee's personnel file are confidential and not available for public review. The ordinance is modeled on a state statute related to personnel records of state employees. AS 39.25.080. This means the ordinance provides the same level of confidentiality to borough employees as is currently provided to state employees. The draft ordinance is not exactly the same as state law since it includes performance evaluations specifically rather than include them under the general category of "assessment materials".

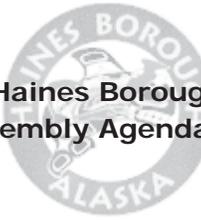
The Assembly has the authority to classify personnel records as confidential under state law. The public records act states that records are open to inspection "[u]nless specifically provided otherwise". AS 40.25.110. This ordinance would be such a specific provision "otherwise".

The ordinance is also authorized under the Haines Borough Charter. Section 18.04(B) of the charter requires borough records to be open to the public unless "authorized to be confidential" by state statute. The provision of AS 40.25.110 quoted above is such an authorization.

The ordinance only applies to borough employees that are part of the Borough's "personnel system". It does not apply to the categories of employees listed in HBC 2.72.020. This includes the manager, school district employees and "contracted parties". In our opinion,

"contracted parties" would include employees who serve pursuant to the terms of a written contract with the Borough. If the Assembly wanted to include these categories of employees within the coverage of this ordinance additional language would need to be added to this draft.

If you or the Assembly have any questions regarding the draft ordinance please let me know.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-344

Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Amend Haines Port Tariff	1. Ordinance 13-08-348 2. 11/29/12 Letter from the Tourism Advisory Board 3. Lightering, Dockage, and Water Usage spreadsheets
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: Originally 10/16/12; Resubmitted 8/19/13	

Full Title/Motion:
Motion: Adopt Ordinance 13-08-348.

Administrative Recommendation:
The borough manager recommends this.

Fiscal Impact:		
Expenditure Required	Amount Budgeted	Appropriation Required
\$ 0	\$	\$

Comprehensive Plan Consistency Review:	
Comp Plan Policy Nos.: 4.5.5 Borough Enterprise Funds; Page 53	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary Statement:
History: On 9/11/12, the assembly adopted an ordinance revising the water-sewer rates including an increase to the commercial bulk water rate. The port tariff must be revised to provide for that rate change, and the assembly authorizes tariff revisions by non-code ordinance. Additionally, the port and harbor advisory committee met jointly with the tourism advisory board on 10/11/13 to discuss possible increases to the PC Dock dockage rates, and they recommend incremental increases. On 10/23/12, a draft tariff amendment ordinance was referred to the finance committee. Since that time, staff has drafted a new ordinance essentially the same but with the addition of a wharfage rate for logs at Lutak Dock. The assembly is asked to, once again, consider these amendments. This was introduced on 8/27 and had a first public hearing on 9/10.

Referral:			
Sent to: Finance Committee		Date: 10/23/12	
Recommendation:	Refer to:	Meeting Date: 10/30/12	

Assembly Action:	
Workshop Date(s):	Public Hearing Date(s): 9/10, 9/24/13
Meeting Date(s): 10/23/12, 8/27/13, 9/10/13, 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING THE PORT OF HAINES TERMINAL TARIFF NO. 3 TO ADJUST WATER RATES AT HAINES PORT FACILITIES, ADJUST DOCKAGE RATES AT THE PORT CHILKOOT DOCK, ADD LOGS TO THE WHARFAGE RATES, AND MOVE TEXT FROM ONE TARIFF PAGE TO ANOTHER.

BE IT ORDAINED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance shall not become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Rule No. 34, 305, Page 15-A, Port of Haines Terminal Tariff No.3. Port of Haines Terminal Tariff No.3 is amended to annually adjust dockage rates at the Port Chilkoot Dock by \$.025 per foot over a five-year period and shall read, as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED
 STRIKETHROUGH ITEMS ARE DELETED

RULE NO. 34 TERMINAL TARIFFS

 305. PORT CHILKOOT DOCK ~~AND PORT CHILKOOT LIGHTERING FACILITY~~ DOCKAGE RATES

Port Chilkoot Dock dockage charges are assessed upon Length-Over-All (LOA) of the vessel. LOA is defined as the linear distance, in feet, from the most forward point at the stem to the aftermost part of the stern of the vessel, measured parallel to the base of the vessel.

LOA of the vessel as published in "Lloyds Register of Shipping" will be used and when not published, the Port reserves the right to: (a) obtain the LOA from the vessel's register, or (b) measure the vessel.

Dockage rates per foot per 24-hour period **shall be as follows, increasing annually by \$.25 effective January 1 each year:**

Vessel LOA	Charge <u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
000/149	\$0.75	<u>\$1.00</u>	<u>\$1.25</u>	<u>\$1.50</u>	<u>\$1.75</u>	<u>\$2.00</u>
150/199	\$0.94	<u>\$1.19</u>	<u>\$1.44</u>	<u>\$1.69</u>	<u>\$1.94</u>	<u>\$2.19</u>
200/299	\$1.19	<u>\$1.44</u>	<u>\$1.69</u>	<u>\$1.94</u>	<u>\$2.19</u>	<u>\$2.44</u>
300/399	\$1.50	<u>\$1.75</u>	<u>\$2.00</u>	<u>\$2.25</u>	<u>\$2.50</u>	<u>\$2.75</u>
400/499	\$1.88	<u>\$2.13</u>	<u>\$2.38</u>	<u>\$2.63</u>	<u>\$2.88</u>	<u>\$3.13</u>
500/599	\$2.38	<u>\$2.63</u>	<u>\$2.88</u>	<u>\$3.13</u>	<u>\$3.38</u>	<u>\$3.63</u>
600/699	\$2.75	<u>\$3.00</u>	<u>\$3.25</u>	<u>\$3.50</u>	<u>\$3.75</u>	<u>\$4.00</u>
700 and over	\$3.00	<u>\$3.25</u>	<u>\$3.50</u>	<u>\$3.75</u>	<u>\$4.00</u>	<u>\$4.25</u>

Minimum charge of \$80.00

These rates shall be increased, effective January 1 of each year.

Section 5. Amendment of Rule No. 34, 305, Page 15-B, Port of Haines Terminal Tariff No.3. Port of Haines Terminal Tariff No.3 is amended to renumber the Port Chilkoot Dock Lightering Facility item number and to insert a paragraph moved from Page 15-A. The text remains unchanged but is relocated to the next page in the tariff. Page 15-B shall read, as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED OR MOVED FROM A PREVIOUS PAGE
STRIKETHROUGH ITEMS ARE DELETED

RULE NO. 34 TERMINAL TARIFFS

~~305~~ **306**. PORT CHILKOOT DOCK LIGHTERING FACILITY RATES-(C)

For use of Port Chilkoot Dock lightering float dock, including lightering to transfer passengers to or from larger vessels; to pick up or discharge passengers for local marine tours; moorage of vessels; and moorage of vessels unable to moor in the small boat harbor.

Rates per 24 Hour Period:

Lightering or transfer of passengers to or from a larger vessel:

Two hundred fifty (\$250) dollars flat rate per day.

Use of the facility by vessels with a capacity of ten passengers or more to load or unload passengers for tours or charters originating or ending in Haines. This fee shall not apply to vessels mooring at the lightering facility for more than one hour per docking:

Twenty (\$20) dollars

When use of the facility is for temporary or emergency transient moorage, or under the terms of a preferential use agreement approved by the Borough Assembly ("PUA"), standard small boat harbor transient moorage rates shall apply. Such use shall only be in case of an emergency or lack of moorage space in the small boat harbor or under the terms of a PUA and shall apply for no more than seventy-two consecutive hours per vessel. Such use shall not interfere with the scheduled use of the dock by the other vessels. Following expiration of the seventy-two hour period, standard dockage rates shall apply.

All other vessels shall pay standard dockage rates.

Section 6. Amendment of Rule No. 34, 310, Page 16, Port of Haines Terminal Tariff No.3. Port of Haines Terminal Tariff No.3 is amended to adjust water rates at Haines port facilities and shall read, as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

RULE NO. 34 TERMINAL TARIFFS

310. ITEM 310 WATER RATES

\$50 service charge plus ~~\$4.00~~ **\$4.50** per 1,000 gallons for water, ~~except that this charge shall not apply at the Lutak Dock~~ **at any Haines Port Facility.**

Haines Borough
Ordinance No. 13-08-348
Page 3 of 4

Section 7. Amendment of Rule No. 34, 400, Pages 17 and 18, Port of Haines Terminal Tariff No.3. Port of Haines Terminal Tariff No.3 is amended to add logs to the Wharfage Rates and shall read, as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

RULE NO. 34 TERMINAL TARIFFS

400. ITEM 400 WHARFAGE AND HANDLING

WHARFAGE

ITEM 401:

Freight, N.O.S.

ITEM 402: ~~RESERVED~~

Logs

ITEM 403:

Gravel, Pit run Sand or Gravel; Sand;
Crushed Aggregate; Process Stone or Boulders

ITEM 404:

Explosives and other Hazardous Cargo, Viz.:

Powder, gun or blasting; Blasting Caps
and Agents; Dynamite; High Explosives;
Ammunition other than small arms; and
other cargo deemed hazardous by the
Haines Borough. (See Note 1)

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Item 401: NOS	\$3.50	\$3.85	\$4.25	\$4.65	\$5.15
<u>Item 402: Logs</u>			<u>\$0.50</u>	<u>\$0.55</u>	<u>\$0.60</u>
Item 403: Gravel	\$0.20	\$0.25	\$0.30	\$0.35	\$0.40
Item 404: Explosives/ Hazardous Waste	\$8.00	\$8.80	\$9.70	\$10.65	\$11.70

NOTE 1) Material subject to Rule 34.250. Written permission of the Haines Borough must be obtained prior to any movement of explosives and other hazardous cargo over Borough Port facilities.

These rates shall be increased, effective January 1 of each year.

Haines Borough
Ordinance No. 13-08-348
Page 4 of 4

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 08/27/13
Date of First Public Hearing: 09/10/13
Date of Second Public Hearing: 09/24/13

Haines Borough
Tourism Advisory Board
November 29, 2012

Mayor Scott, Mark Earnest, and Borough Assembly,

I am writing on behalf of the Haines Tourism Advisory Board regarding the proposed Port Tariff amendment to the lightering float at the PC Dock.

The Tourism Advisory Board (TAB) and the Port and Harbor Advisory Committee (PHAC) held a joint meeting on October 11, 2012, with the sole purpose of discussing the Port of Haines Terminal Tariff and developing recommendations for revision beginning in 2014. After lengthy discussion, the advisory committees agreed on a recommended tariff increase to the cruise ship terminal, however both committees also agreed that more information and data was needed prior to making a recommendation on the lightering float, and more specifically the tariff for the Haines Skagway Fast Ferry. The committees voted to table the item until March, allowing for adequate time for the retrieval of necessary information that accurately summarized the impact of a tariff increase at that terminal. The committees understood that March was a suitable timeframe, as the proposed increases would not take effect until 2014, and it was in advance of scheduling and pricing by the operators for the 2014 season.

The TAB was extremely disappointed to learn that the Finance Committee did not heed the recommendation from the joint meeting to postpone the discussion until March. Rather, the Finance Committee is recommending an annual 10% increase on the tariff over 5 years, which equates to a 61% increase at the conclusion of the 5 year period. At the joint meeting, Borough Manager Mark Earnest made it clear that the town of Haines needs to be sending the correct message to the tourism industry that the town supports the industry and wants to see it continually grow. The TAB fails to understand how a 61% increase over a 5 year period on an essential service within the tourism industry sends a positive message.

The possible ramifications from a tariff increase are enormous to the tourism industry, and it is our hope that the Borough Assembly also understands the value in delaying the discussion until March when more information can be presented. The Fast Ferry is a lifeline to tourism in the Haines Borough, without which tourism companies in Haines would not be able to survive. The Fast Ferry is under extreme pressure from the cruise line industry not to raise rates at this point in time, resulting in the additional cost of the tariff being burdened by the operating company. The profit margin for the Fast Ferry is minimal enough that any increases in costs threaten its survival.

The TAB does not understand the need or urgency to make this decision before more information can be obtained that helps better illustrate the impact of a tariff increase at the lightering terminal. The TAB continues to request that the discussion on the proposed Port Tariff amendment to the lightering float at the PC Dock be postponed until March, as recommended by the both the TAB and PHAC, in order to obtain further information on the economic impact to both operators and the town of Haines, as well as the actual costs associated with the operation of the dock.

Thank you in advance for your time and consideration.

Sincerely,

Ross Silkman
President - Tourism Advisory Board

LIGHTERING

Flat Fee		2012	2013	2014	2015	2016	2017
5% Annual Increase		\$20.00	\$21.00	\$22.05	\$23.15	\$24.31	\$25.53
HSFF 2012 Landings	409	\$ 8,180.00	\$ 8,589.00	\$ 9,018.45	\$ 9,469.37	\$ 9,942.84	\$ 10,439.98

Flat Fee		2012	2013	2014	2015	2016	2017
10% Annual Increase		\$20.00	\$22.00	\$24.20	\$26.62	\$29.28	\$32.21
HSFF 2012 Landings	409	\$ 8,180.00	\$ 8,998.00	\$ 9,897.80	\$ 10,887.58	\$ 11,976.34	\$ 13,173.97

Per Head		\$0.25	\$0.50	\$0.75	\$1.00
HSFF2012 Passengers	20,000	\$ 5,000.00	\$ 10,000.00	\$ 15,000.00	\$ 20,000.00

DOCKAGE

	Vessel Lengths (per foot)						
5% Annual Increase		2012	2013	2014	2015	2016	2017
	000/149	\$ 0.75	\$ 0.79	\$ 0.83	\$ 0.87	\$ 0.91	\$ 0.96
	150/199	\$ 0.94	\$ 0.99	\$ 1.04	\$ 1.09	\$ 1.14	\$ 1.20
	200/299	\$ 1.19	\$ 1.25	\$ 1.31	\$ 1.38	\$ 1.45	\$ 1.52
	300/399	\$ 1.50	\$ 1.58	\$ 1.65	\$ 1.74	\$ 1.82	\$ 1.91
	400/499	\$ 1.88	\$ 1.97	\$ 2.07	\$ 2.18	\$ 2.29	\$ 2.40
	500/599	\$ 2.38	\$ 2.50	\$ 2.62	\$ 2.76	\$ 2.89	\$ 3.04
	600/699	\$ 2.75	\$ 2.89	\$ 3.03	\$ 3.18	\$ 3.34	\$ 3.51
	700/OVER	\$ 3.00	\$ 3.15	\$ 3.31	\$ 3.47	\$ 3.65	\$ 3.83
Each Visit	205	\$ 243.95	\$ 256.25	\$ 268.55	\$ 282.90	\$ 297.25	\$ 311.60
12 Visits	205	\$ 2,927.40	\$ 3,075.00	\$ 3,222.60	\$ 3,394.80	\$ 3,567.00	\$ 3,739.20
Each Visit	780	\$ 2,340.00	\$ 2,457.00	\$ 2,581.80	\$ 2,706.60	\$ 2,847.00	\$ 2,987.40
22 Visits	780	\$ 51,480.00	\$ 54,054.00	\$ 56,799.60	\$ 59,545.20	\$ 62,634.00	\$ 65,722.80
ANNUAL TOTALS		\$ 54,407.40	\$ 57,129.00	\$ 60,022.20	\$ 62,940.00	\$ 66,201.00	\$ 69,462.00

	Vessel Lengths (per foot)						
\$0.25 Annual Increase		2012	2013	2014	2015	2016	2017
	000/149	\$ 0.75	\$ 1.00	\$ 1.25	\$ 1.50	\$ 1.75	\$ 2.00
	150/199	\$ 0.94	\$ 1.19	\$ 1.44	\$ 1.69	\$ 1.94	\$ 2.19
	200/299	\$ 1.19	\$ 1.44	\$ 1.69	\$ 1.94	\$ 2.19	\$ 2.44
	300/399	\$ 1.50	\$ 1.75	\$ 2.00	\$ 2.25	\$ 2.50	\$ 2.75
	400/499	\$ 1.88	\$ 2.13	\$ 2.38	\$ 2.63	\$ 2.88	\$ 3.13
	500/599	\$ 2.38	\$ 2.63	\$ 2.88	\$ 3.13	\$ 3.38	\$ 3.63
	600/699	\$ 2.75	\$ 3.00	\$ 3.25	\$ 3.50	\$ 3.75	\$ 4.00
	700/OVER	\$ 3.00	\$ 3.25	\$ 3.50	\$ 3.75	\$ 4.00	\$ 4.25
Each Visit	205	\$ 243.95	\$ 295.20	\$ 346.45	\$ 397.70	\$ 448.95	\$ 500.20
12 Visits	205	\$ 2,927.40	\$ 3,542.40	\$ 4,157.40	\$ 4,772.40	\$ 5,387.40	\$ 6,002.40
Each Visit	780	\$ 2,340.00	\$ 2,535.00	\$ 2,730.00	\$ 2,925.00	\$ 3,120.00	\$ 3,315.00
22 Visits	780	\$ 51,480.00	\$ 55,770.00	\$ 60,060.00	\$ 64,350.00	\$ 68,640.00	\$ 72,930.00
ANNUAL TOTALS		\$ 54,407.40	\$ 59,312.40	\$ 64,217.40	\$ 69,122.40	\$ 74,027.40	\$ 78,932.40

WATER

2012 Gallons
2,612,000
22 Hook Ups

2012 Rate
x 0.004
plus \$50 per hook up
\$11,548.00

Proposed 2013 Rate
x 0.0045
plus \$50 per hook up
\$12,854.00
(using 2012 figures)



Haines Borough Administration
Mark Earnest, Borough Manager
 (907)766-2231 • Fax(907)766-2716
 mearnest@haines.ak.us

September 24, 2013

South Portage Cove Harbor Expansion

I have requested a scope and fee proposal from PND to determine the depth of bedrock in the area of the proposed partially penetrating wave barrier and shoreline area for possible dredging and/or excavation for a possible relocated rubble mound breakwater (proposed new Alternative 1B). There may be a possibility of using the Pacific Pile and Marine barge while it is in Haines this winter for the Port Chilkoot Dock Improvement and Letnikof Harbor Refurbishment projects, thus minimizing mobilization and demobilization costs for that work. PND expects to have those documents to the Borough in time for the October 8, 2013 Assembly meeting.

Lutak Dock Loss of Fill Investigation

I have requested a scope and fee proposal from PND for conducting a reconnaissance-level investigation of the loss of fill at the dock. The proposed scope of work includes a dive inspection, performed by underwater engineers, and partial excavation of the portions of the dock surface where sink holes have been occurred over a period of many years. PND expects to have those documents to the Borough in time for the October 8, 2013 Assembly meeting.

Local Road Improvement Program

Staff is continuing to develop a local Road Improvement Program (RIP) for ongoing major maintenance upgrades to the Borough's road system. The project consists of describing, prioritizing, and developing cost estimates for local road segments throughout the Borough, as well as setting aside design and construction funding on an annual basis. The program will include several individual road improvement plans, such as Young Road area roads, Fort Seward area roads, Chilkat Lake area roads, etcetera. Each road area plan will identify options and associated costs for individual road segments, based on the level of improvements. It will also look at funding and financing options, including the Borough CIP Fund, General Fund balances, and establishing a Local Improvement District (LID) for an area. This planning effort will be very useful in seeking Alaska Department of Transportation and Public Facilities (ADOT&PF) program funding, including Roads to Resources (RTR), Safe Routes to Schools (SRTS), Community Transportation Program (CTP), and others.

Alaska Marine Highway System - Haines Ferry Terminal Improvements

I have signed all easement, memorandum of agreement, and purchase voucher documents related to the Alaska Department of Transportation and Public Facilities (ADOT&PF) Haines Ferry Terminal Improvements project at the Lutak Dock. Additionally, I accepted the offer of \$14,000 for the underground easement for Parcel E-5. All of these actions were authorized by Ordinance No. 13-07-337.

Parcel	Action	Amount
Parcel 3	QCD	\$194,500
Parcel E-4	Easement	\$47,050
Parcel TCE-4	TCE	\$60,450
Parcel E-5	Easement	\$14,000
	Administrative Settlement	\$36,000
Total		\$352,000

QCD - Quitclaim Deed

TCE - Temporary Construction Easement

Land Assessment Plan

We are continuing to review and evaluate the three proposals received in response to the Request for Proposals (RFP) for contract assessment services for the current fiscal year. I expect to have a recommendation to the Assembly for consideration on October 8, 2013.

Borough Radio Communication System and E911

Staff review and editing of the Borough Radio Communication System and E911 bid documents is complete. We are making some minor changes to the bid documents to streamline the grant reporting process. The bid advertising will begin no later than September 24, 2013.

High School Air Handling Unit

High School Air Handling Unit project design is about 95 percent complete. Murray & Associates will submit these documents to the Borough for review by the end of September.

Port Chilkoot Dock and Letnikof Harbor Upgrades

Pacific Pile & Marine mobilized personnel and equipment to Haines on September 14, 2013, and demolition of the Port Chilkoot Dock began on September 15. Most of the steel fabrication for this project has been completed and is scheduled to arrive to Haines the week of September 22. Work is scheduled to take place 7 days a week, 10 hours per day, at least for the early stages of the project. Weekly progress meetings will be held with the contractor to monitor construction.

Chilkat Lake Road Improvements

Final billing for the Chilkat Lake Road improvements project has been submitted. The Borough will retain approximately \$40,000 until the agreed upon changes have been completed, which is scheduled for the summer of 2014.

Highland Estates Asbestos-Cement Pipe Replacement

Work on the replacement of the Highland Estates asbestos-cement (AC) waterline replacement project began September 3, 2013. This project is scheduled for substantial completion on November 1, 2013.

Front Street Road Improvements

All of the drainage and sidewalk construction is complete. Paving is underway and the job should be complete by the end of September.

Allen Road AC Pipe Replacement

Design is near completion for the replacement of the AC Pipe on Allen Road. Replacement of the waterline is scheduled to begin in the summer of 2014. This is part of an ongoing upgrade to our drinking water distribution system as outlined in the Water Sewer Master Plan.

West Fair Drive Sewer Line Replacement

Design is near completion for the replacement of the sewer line on West Fair Drive. The design will be submitted to DEC for approval. This project is funded through our CIP. The line is undersized and will not meet the demand for service as property owners continue to need service in the area.

Wastewater Treatment Plant

The Borough submitted a grant application on August 5, 2013 for upgrades to the plant. These upgrades include new screen equipment, a new screw press, blower fans, and structural improvements. The new processing equipment will be more efficient and allow the removal of higher water content from the solids being handled resulting in cost savings.

Portage Cove Harbor Improvements and Upgrades

Projects that are underway or in design at the Portage Cove Harbor include the following:

- New stairs to the grid
- Power to the grid
- Installation of a Sani-Sailor pump to pump wastewater off of boats
- Overhaul of the stationary crane located at the fuel float

Snow Plow Contracts

Staff is reviewing previous snow plow contracts and will either extend or re-advertise contracts in September.

Klehini Fire Department new Septic System

Design is nearly complete for the new septic system located at the KVVFD. Plans will be submitted to DEC for approval and construction will take place this fall. This job will be advertised to all qualified local contractors.

Personnel

Police Officer: The Borough received a total of 16 applications for the Chief of Police position as of the September 11 cutoff. I have reviewed the applicants and shortlisted the number of applications to four. That does not mean that the non-shortlisted applicants have been eliminated from consideration, rather I have made the decision to move forward with the four top-ranked applicants at this time. The finalists include, in alphabetical order, the following individuals:

- Steven Annets, Pataskala, OH
- Christopher Canaski, Des Allemands, LA
- Simon Ford, Haines, AK
- Scott Happ, Brighton, CO

After they have completed paperwork, I will be proceeding with a background check on these individuals.

I will be forwarding the applications of the finalists to the Public Safety Commission Chair. I will let the Committee Chair determine the method of their evaluation but am available to assist the members in any way I can. Police Department staff will also be involved in the evaluation process; obviously Interim Chief Simon Ford will not be part of evaluating candidates or in the planning or preparation of the evaluation process.

Borough Manager: The borough manager position has been posted in the following places:

1. nwjobs.com (Seattle Times)
2. careerbuilder.com
3. International City/County Management Association (ICMA)
4. Alaska Municipal League (AML) website & FAX alert
5. Borough website
6. Posted in usual places around town

The deadline for applications is 5:00 pm, Thursday, October 3, 2013, or thereafter until filled. As of 5:00 pm, September 17, ten complete applications for the manager position have been received.

I will have information regarding transition plans for distribution at the September 24, 2013 Assembly meeting.

Retirements: Two long-time Borough employees have accepted the Borough's Retirement Incentive Program: Sue Nelson and Connie Staska. Sue's last day is September 30, 2013 and Connie's last day is December 31, 2013.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNEILL

Department of Transportation
and Public Facilities

SOUTHEAST REGION
DESIGN & ENGINEERING SERVICES
Preconstruction

6860 Glacier Highway
PO Box 112506
Juneau, Alaska 99811-2506
Main: 907 465.4444
Toll free: 800 575.4540
Fax: 907 465.4414

September 9, 2013

LETTER OF OFFER
Via E-Mail

Mr. Mark Earnest
Borough Manager
Haines Borough
P.O. BOX 1209
Haines, Alaska 99827

Re: Haines Ferry Terminal Improvements
Project No. 68433
FHWA No. FB-NH-095-5(14)
Parcel No. E-5

Dear Mr. Earnest,

The Department of Transportation and Public Facilities (the department) has now received an appraisal for Parcel E-5 for this project. Accompanying this letter is a copy of an appraisal by Charles E. Horan of Horan & Company, LLC. Mr. Horan's opinion of the fair market value of the rights involved is that they are worth 1/3 of the surface estate, or \$4 per square foot for a total of \$13,940. Also accompanying this letter is a Reviewer's determination by Mr. Bruce Bowler. Mr. Bowler approved of Mr. Horan's appraisal, and determined that Just Compensation for the rights to be acquired is the sum of \$14,000.

The department hereby offers to purchase the easement rights to Parcel E-5 for a total of **\$14,000.**

Assuming that this amount is acceptable to the borough, I have prepared the necessary documents by which the property rights would be conveyed. Accompanying this letter is a permanent easement conveyance for Parcel E-5. Also enclosed is a Memorandum of Agreement, a Purchase Voucher, and a W-9 form.

Again I thank you for your assistance in moving the process along. If you have any questions or concerns about this offer, please call me at 465-4519.

Ray C. Preston

A blue ink signature of Ray C. Preston, written in a cursive style.

Right of Way Agent

enclosures



STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

REVIEW APPRAISER'S DETERMINATION OF
JUST COMPENSATION

Original

PROJECT NAME: HAINES FERRY TERMINAL
IMPROVEMENTS

STATE PROJECT #: 68433

FEDERAL-AID PROJECT #FB-NH-095-5(14)

PARCEL E-5

Owner: **City and Borough of Haines**

The following appraisals were reviewed and approved, using Department and nationally-recognized appraisal standards:

Appraiser: Charles Horan Date of Appraisal: 8/22/2013 Reviewer: L. Bruce Bowler Approved

This Determination was prepared in conformity with 49 CFR 24, the Uniform Standards of Professional Appraisal Practice and Chapter 5 of DOT&PF's Appraisal Guidelines. The data and statements of fact presented in the appraisal have not been verified by this office, and are assumed to be true and correct. All of the assumptions and limiting conditions contained in the appraisal report are also conditions of this review, unless otherwise stated. My Determination is the result of my independent, personal, unbiased professional analysis, opinions, and conclusions, based upon a technical review of the appraisal and other relevant factual data, without significant professional assistance or direction. My compensation is not contingent on the results of this review or the reporting of any predetermined result. I will not benefit in any manner from the acquisition of the property being appraised. I have no direct, indirect, present, or prospective personal interest or bias toward this property or to the parties involved.

I made a physical inspection of the subject and comparables on April 23, 2013.

Just Compensation for the property to be acquired is:

\$ 14,000.00 (rd)

Easement: 3,485 SF @ \$4/SF	\$ 13,940.00
No damages or improvements were noted	
TOTAL	\$ 13,940.00

This determination is based on Mr. Horan's appraisal, which meets existing department and Uniform Act appraisal standards. The reports' analyses, opinions and conclusions appear to be appropriate and reasonable given the data and analyses presented. The easement value was rounded in the City's favor.

It is understood that this Determination of Just Compensation is to be used in conjunction with a Federal-Aid or State project, and is intended for use only by the Alaska Department of Transportation and Public Facilities. To the best of my knowledge, items compensable under State Law but not eligible for Federal reimbursement, if any, are attached on a separate sheet.

Federal Participation: \$14,000.00 State Funds: n/a

Date: September 5, 2013

Review Appraiser, AK Certification # 0022

APPROVED FOR ACQUISITION

9-5-13
Murphy, Chief Right of Way Agent Date

HORAN & COMPANY

REAL ESTATE APPRAISERS/CONSULTANTS

CHARLES E. HORAN MAI / WILLIAM G. FERGUSON, JOSHUA C. HORAN, JAMES A. CORAK,
SHEILA M. KRAMER, AND SLATER FERGUSON

403 LINCOLN STREET, SUITE 210, SITKA, ALASKA 99835
Phone: (907)747-6666 Fax: (907)747-7417 commercial@horanappraisals.com

August 30, 2013

Ray Preston, Right-of-Way Agent, Southeast Region
Alaska Department of Transportation & Public Facilities
P O Box 112506
Juneau, Alaska 99811-2506

Ref: Update Amended Appraisal of Parcel E-5 Underground Easement, Haines Ferry Terminal Improvements, Project No. 68433, City and Borough of Haines. Our File No. 13-092

Dear Mr. Preston:

At your request, I have made a market value estimate of the proposed acquisition of Parcel E-5 from the Haines Borough for the Haines Ferry Terminal Improvements Project. This is an underground easement that involves about 3,485 ft.² on the level portion of the upland area behind the Lutak Dock.

This is an update amendment to the original appraisal we completed for the project Parcels 3, E-4 and TCE-4 which had an effective date of February 7, 2012 and a report date of March 16, 2012 which I had originally completed for you and the department. This update amendment includes by reference the original appraisal which included a detailed description of the subject property and analysis of the larger parcel and contains the most relevant market information considered at that time. We have not re-inspected the property for the purpose of this update but make the extraordinary assumption that the condition of the property is similar. The subject of this update appraisal is a subsurface easement to facilitate a tieback for the dock front structure. This easement will allow continued use of the surface for right-of-way, access, the marshaling of cargo etc. but will preclude building development over the area.

Based on the updated market information and analysis and the description of the property contained in this report amended updated report it is my opinion the subject Parcel E-5 has a value effective April 22, 2013 as follows:

Parcel E-5 - \$13,940

This value is based on the contributory value to the larger parcel at \$12 per square foot for its fee simple interest before imposition of the easement. The easement represents 33% of this market value or \$4.00 per square foot. We found no damage or benefits to the remainder.

13-092 - Underground Easement Haines Ferry Terminal

The Department of Transportation (DOT), our client is the intended user, the intended use is to negotiate with the land owner, the Borough, who may also be an intended user of this appraisal at the client's discretion. Please review the attached report.

Thank you for this opportunity to be of service. If you have any questions or comments, please do not hesitate to call.

Respectfully Submitted,

HORAN & COMPANY, LLC



Charles E. Horan, MAI

AA 41

CEH:jrw

1 INTRODUCTION

The state of Alaska Department of Transportation and Public Facilities (DOT) wishes to acquire Parcel E-5 from the Haines Borough for the Haines Ferry Terminal Improvements Project. This is an underground easement that involves about 3,485 ft.² on the level portion of the upland area behind the Lutak Dock. The dock is at 4.5 Mile Lutak Road, Haines, Alaska.

This is an update amendment to the original appraisal we completed for the project Parcels 3, E-4 and TCE-4 which had an effective date of February 7, 2012 and a report date of March 16, 2012. This update amendment includes by reference the original appraisal which included a detailed description of the subject property and analysis of the larger parcel and contains the most relevant market information considered at that time. We have not re-inspected the property for the purpose of this update but make the extraordinary assumption that the condition of the property is similar. The subject of this update appraisal is subsurface easement to facilitate a tieback for the dock front structure. This easement will allow continued use of the surface for right-of-way, access, the marshaling of cargo etc. but will preclude building development over the area.

Larger Parcel Determination

The larger parcel is the Haines docking facility is describe in the original report after the acquisition of Parcels 3, 4-E and TCE-4 waterfront area for the Haines Borough dock ownership is just over 13 acres. Of this area, the appraiser estimated about 5 acres ± is filled lands behind the dock. The remainder lands are sloping, tidal or submerged lands.

1.1 PURPOSE OF THE APPRAISAL, INTENDED USE AND USER

Per the appraisal request;

The services requested are for an appraisal of a subsurface easement for this project, viz. Parcel E-5, which would specifically be for the purpose of establishing, constructing and maintaining a retaining wall for the Lutak Dock. More specifically, the easement is for the purpose of establishing tieback supports to the retaining wall. The tieback supports will be located approximately 10 feet below the surface of the dock.

Copies of the proposed easement and drawing are included in the addenda.

The purpose of this appraisal is to estimate the market value of Parcel E-5.

The intended use is to negotiate the value of the property and easement taken from the subject land owner. The intended user of this report is the client, the Alaska Department of Transportation. The Borough of Haines may also be an intended user of this appraisal at the client's discretion.

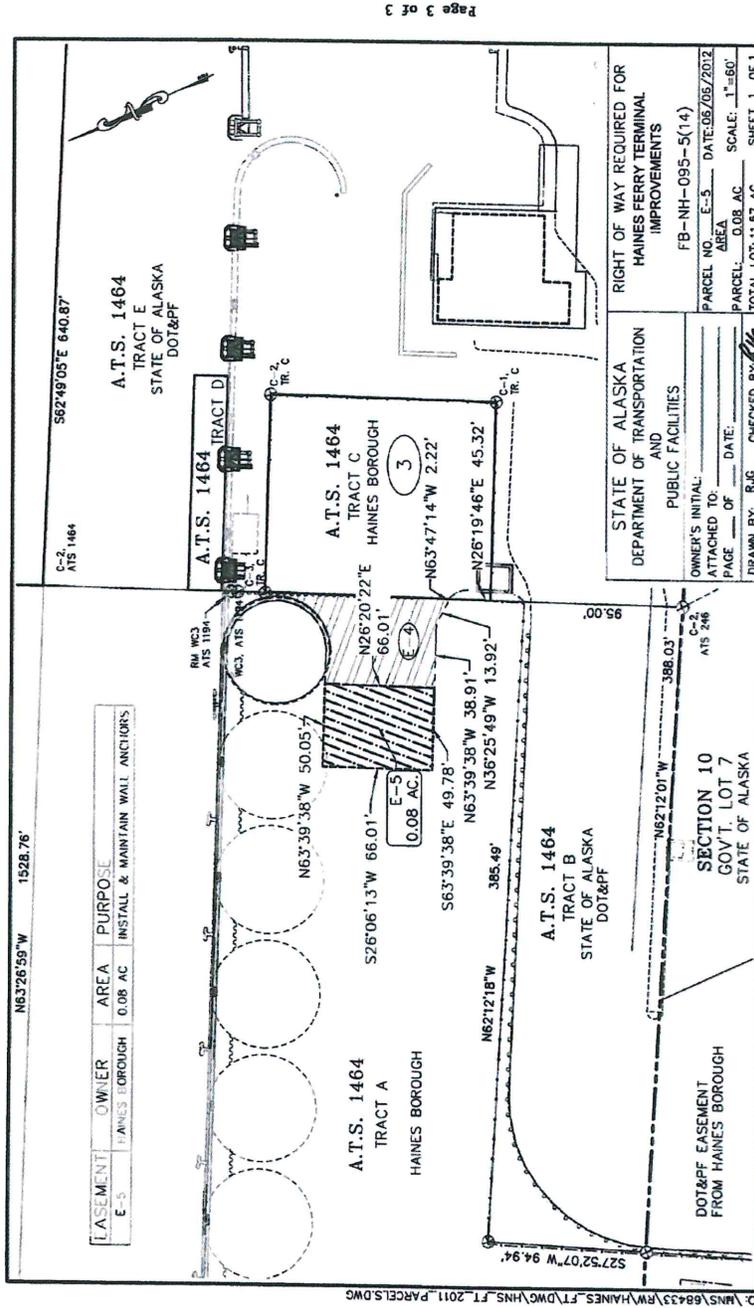


FIGURE 4 - CLOSE UP OF PROPOSED ACQUISITION
 13-092 - Underground Easement Haines Ferry Terminal

2.2 DESCRIPTION OF ACQUISITIONS

Parcel E-5 containing 3,484.8 sq. ft., more or less, is hereby granted to the State of Alaska for the purpose of establishing, constructing and maintaining a retaining wall for the Lutak Dock. More specifically, this easement is for the purpose of establishing tieback supports to the retaining wall. The tieback supports will be located approximately 10 feet below the surface of the dock. The Grantor covenants that the State of Alaska shall have a free and unrestricted right to maintain said facilities as long as the right-of-way of which this easement area is used for its stated purpose. Grantor also acknowledges that it cannot locate a permanent structure within the easement area.

See adjacent detail for the location and size of the proposed acquisition, Fig 4.

The subject area would not be available for building development but could be used on its surface estate for access and storage and martialing of cargo.

2.3 DESCRIPTION OF REMAINDER AFTER ACQUISITIONS

After the acquisition of the easement and development of the facility the characteristics of the property on the surface will be unchanged. That area is currently used as a right away and occasional marshaling of materials and other activities to load and unload vessels at the dock.

In the after condition however the option to develop this area with the permanent structure is lost since the state would have the right to access the underground facility for maintenance over it's timing use.

The encumbered and unencumbered the areas in the after condition are summarized as follows:

Level Area Behind Dock Before Acquisition (Approximate)	219,473 SF
Less Area Acquired, Parcel E-5 encumbered area	3,485 SF
Remaining Unencumbered Area After Acquisition	215,988 SF

August 2013 Haines Vol. Fire Dept. Monthly Report

The Haines Vol. Fire Dept. had three fire callouts in August. The first call was for a single vehicle rollover. The second was for a vehicle fire that was out prior to apparatus leaving the hall. The third call was an unauthorized burn on 4th Avenue. Fire callouts for 2013 total 35. The Haines Vol. Fire Dept. responded to 32 ambulance callouts in August. Calls included three with abdominal pain, one with head trauma, four falls, a seizure, one unresponsive, a respiratory distress, an altered level of consciousness, an ETOH abuse, an allergic reaction, a lower extremity edema, 3 involved in motor vehicle accidents, two with dehydration and exhaustion, and 12 medivacs/transport. Ambulance callouts for 2013 total 179. We responded to our first SAR callout this year. Two hikers got off the trail on Mt. Ripinski and became lost and trapped due to terrain. Jenn Walsh, Vince Hansen and Chris Downer found, treated, and assisted the Coast Guard in hoisting the patients to a helicopter. A good team effort by those three and support staff, nice job!

The first joint meeting for August was a business meeting followed by a scaled down version of a propane disaster with 8 victims. Triage, fire & EMS responders working together, forward patient movement, and accountability were focal points. This training helped us better prepare for larger disasters. The ambulance training was ICS training along with training on new bar code wristbands to be used in large scenarios or events. This system will help track victims from the scene, transport, initial medical facility, medivac service, to final medical facility. The fire training was ICS training along with different roles that fire responders would be involved in if there was a real medical disaster.

Plans for the MMRS (Metropolitan Medical Response System) disaster drill to be held in Haines are progressing. The drill will be held on September 7 Saturday from 9 am to about 1 pm. There will be a simulated propane explosion with 30 or more injuries. This will be a joint venture with many state agencies involved and EMS responders from up to 11 Southeast communities. MMRS has 7 MASH style tent hospitals staged in different southeast communities to be deployed in a large scale event. There will be from 50 – 100 participants here from other communities. We need volunteers to be victims for the drill. All 7 of the mobile hospital tents are scheduled to be deployed here for this event.

Volunteer Hours for August 2013

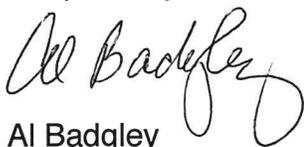
HVFD Fire 223 HVFD Ambulance 335 HVFD SAR 128

Volunteer Hours for all 2013

HVFD Fire 1402 HVFD Ambulance 2327 HVFD SAR 128

Total volunteer hours HVFD for 2013 3857 Hours

Respectfully submitted,



Al Badgley
HVFD Training Officer

RECEIVED Haines Borough
SEP 09 2013
Clerk's Office



Chilkat Center for the Arts

A Community Facility Operated by the Haines Borough

(907) 766-3573

facsimile (907) 766-3574

E-mail business@khns.org

8C

Facility Administration Report August 2013

Usage: Some exciting events during August with a Seibukan Jujutsu exhibition with the visiting teacher. The class raised money prior to the event by selling sushi one evening out of the CCA kitchen...big success! We had a wedding reception, a Dept. of Transportation meeting, an intimate concert with John Smith of Juneau and a Rainbow Glacier Tours used the kitchen to prepare fish for the weekly Wednesday Tours.

In the general class review, yoga took a complete break in August just as Jujutsu returned to their regular schedule following reduced spring/summer classes. Sarah Jaymot continued use of the kitchen and will be here through Halloween. It is unclear whether or not she will continue to rent the kitchen at the Chilkat Center in 2014.

KHNS had a benefit concert with the popular band Trampled by Turtles on August 7th. This was an excellent outreach event generating more awareness of the station than income but everyone agreed the theater was an excellent choice. The station broke even on the concert and made some money in beer and wine sales.

The Gala Event featuring world class musicians Nancy Nash, Steve Tada, Janice Tipton and Allan Vogel and entitled "A Late-Summer Night's Dream - A Musical Fantasy", was held on August 17, 2013 in the Chilkat Center. Proceeds from the event will go towards the local match of a grant application to upgrade the sound and lighting systems in the theater. Proceeds were impressive with the chair sponsorship raising \$10,000 (to date) and another \$2000 raised from the concert with very modest expenses.

September brings back classes like Strongwoman, Morning Muscles and Yoga and the Haines Arts Council is hosting a great band called the Hot Club of Cowtown (Sept 23) right before the Museums of Alaska and the Alaska Historical Conference.

Maintenance

*A ramp to get the snow blower out of the scene shop more easily is being built this summer

* Painting has been proposed for the dance studio in anticipation of the conference in Sept.

Submitted by Facilities Manager, Kay Clements, August 2013

Chilkat Center for the Arts			
8/31/2013			
Contact	Function	Participants	Amount
	Dance Studio		
SEARHC	Yoga	82	135
Chorus Bishop	Seibukan Jujitsu	98	300
	Lobby		
SEARHC	Morning Muscles - No Classes in August	0	0
St Michael's	Sunday Services	65	300
Ellen Ferguson	Wedding reception	50	100
Julie Rae	Concert	30	75
DOWL HKM	DOT meeting	75	100
Jujutsu Event	special exhibition	80	150
	Conference Room		
FCCA	Board meeting	7	n/c
KHNS	Board meeting	7	n/c
	Auditorium		
KHNS	Concert Benefit	250	n/c
FCCA	Concert Benefit	175	n/c
	Kitchen		
Sarah J	August	1	250
Seibukan Jujutsu	Sushi To-go	1	45
Rainbow Glacier Tours	Evening use	1	120
	August Totals		
		892	1,575.00

17 September, 2013

MEMORANDUM

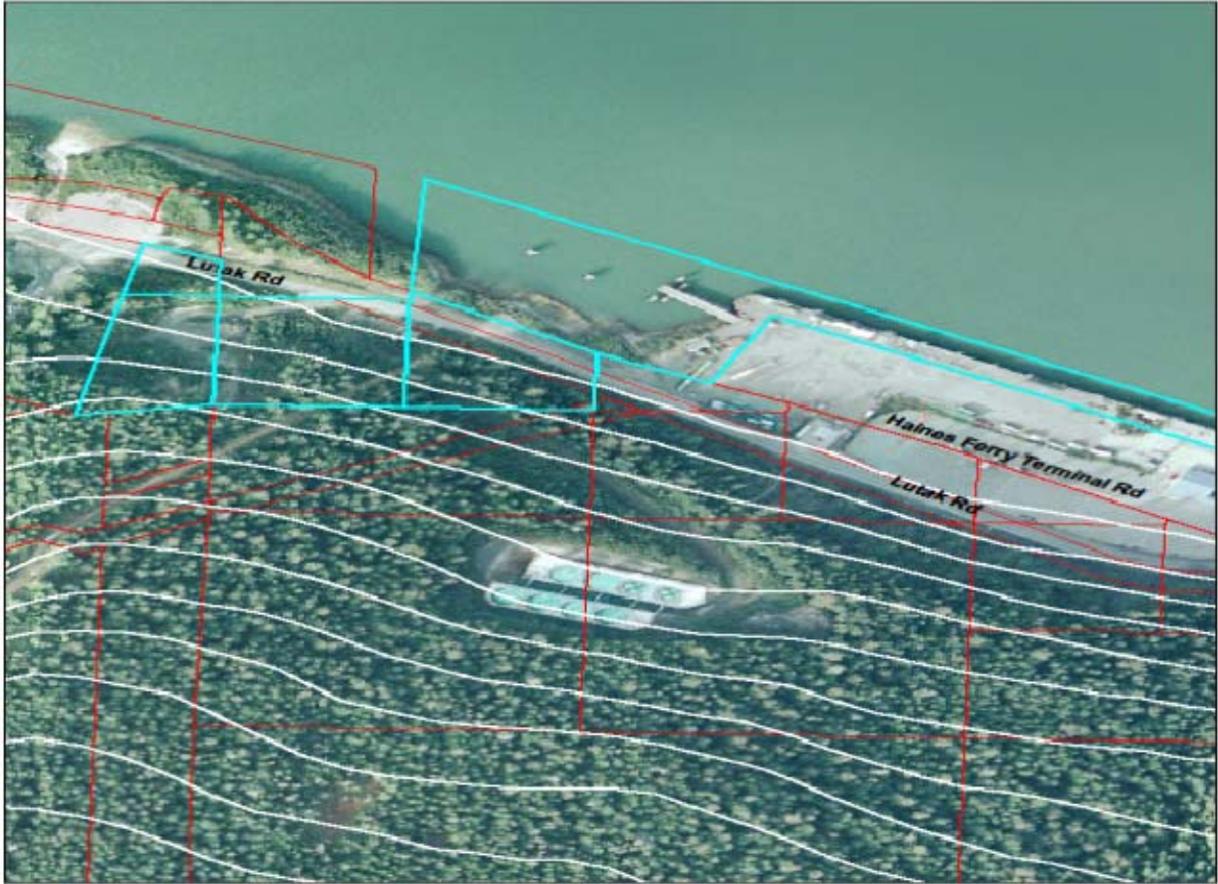
From: Phil Benner, Haines Harbormaster

To: Mark Earnest, Haines Borough Manager

Subject: STAFF REPORT ON PORT AND HARBOR ADVISORY COMMITTEE (PHAC) RECOMMENDATIONS
FOR BOAT HAUL-OUT AND TRAILER FOR HAINES BOROUGH

1. In March 2013 the PHAC was tasked with reviewing the feasibility for a boat haul-out and yard in the Haines Borough. Over the next five months the PHAC reviewed areas for a haul-out and types of haul-outs for the Haines Borough.
2. Properties considered by PHAC were Klukwan Dock and adjacent properties, Schnabel property adjacent to Klukwan property, Beach Road property, Front St. property, Harbor/Ice House property, Canal Marine/Schnabel property, Tank Farm, Lutak Road Property across from Dolphin St., National Guard Property, Lutak Dock, Schaffer Lutak Property, State Lutak Property, Public Safety Building, Letnikof Cove Borough Property, and Letnikof Cove Cannery Property. After three months of discussion the PHAC thought it would be best to start out slowly and use borough owned property at Lutak and the Harbor to see what the demand would be for haul-out, before investing large amounts of monies to the project.
3. As far as haul-out equipment, the PHAC thought it would be best to invest in a used trailer of 50 ton capacity to cover the majority of boats in the harbor. The PHAC was interested in purchasing the used trailer from Skagway but after discussion with Skagway they are not going to sell their old trailer but use it in conjunction with the new trailer.
4. Attached, I have outlined the property recommendations and the cost of a trailer, wash down pad, and equipment needed to start a haul-out and small layup area.
5. Any questions please call me at 766-2448.







ESTIMATED COST OF START UP BOAT HAUL-OUT AND YARD

<u>ITEM</u>	<u>ESTIMATED COST</u>
Trailer	\$100,000.00
Washdown Pad	\$30,000.00
Permitting of Haul-Out	\$20,000.00
Upgrades to layup areas	\$20,000.00
Saddles, dunage	\$5,000.00
<u>Administration</u>	<u>\$5,000.00</u>
	\$180,000.00 estimated startup costs



Klukwan Property on left

Notice 200 feet elevation change on the property.



Klukwan Dock at low tide

Would have to be brought up to grade and permitted for fill.



Upper Tier of Klukwan Property

Level area with about 2 acres of area.

Environmental clean up would be needed on property, could be up to \$1.0 million

Purchase price currently about \$2.5 million but tribal ownership in bankruptcy court



Back of upper tier of Klukwan property

Clean-up will be need in this area also



Looking from upper tier to dock

Approximately 100ft change in elevation from water



Building on the property

Opportunity for potential workers to rent space in building.

Lay up area where environmental pad could be placed.



Schnabel property on right

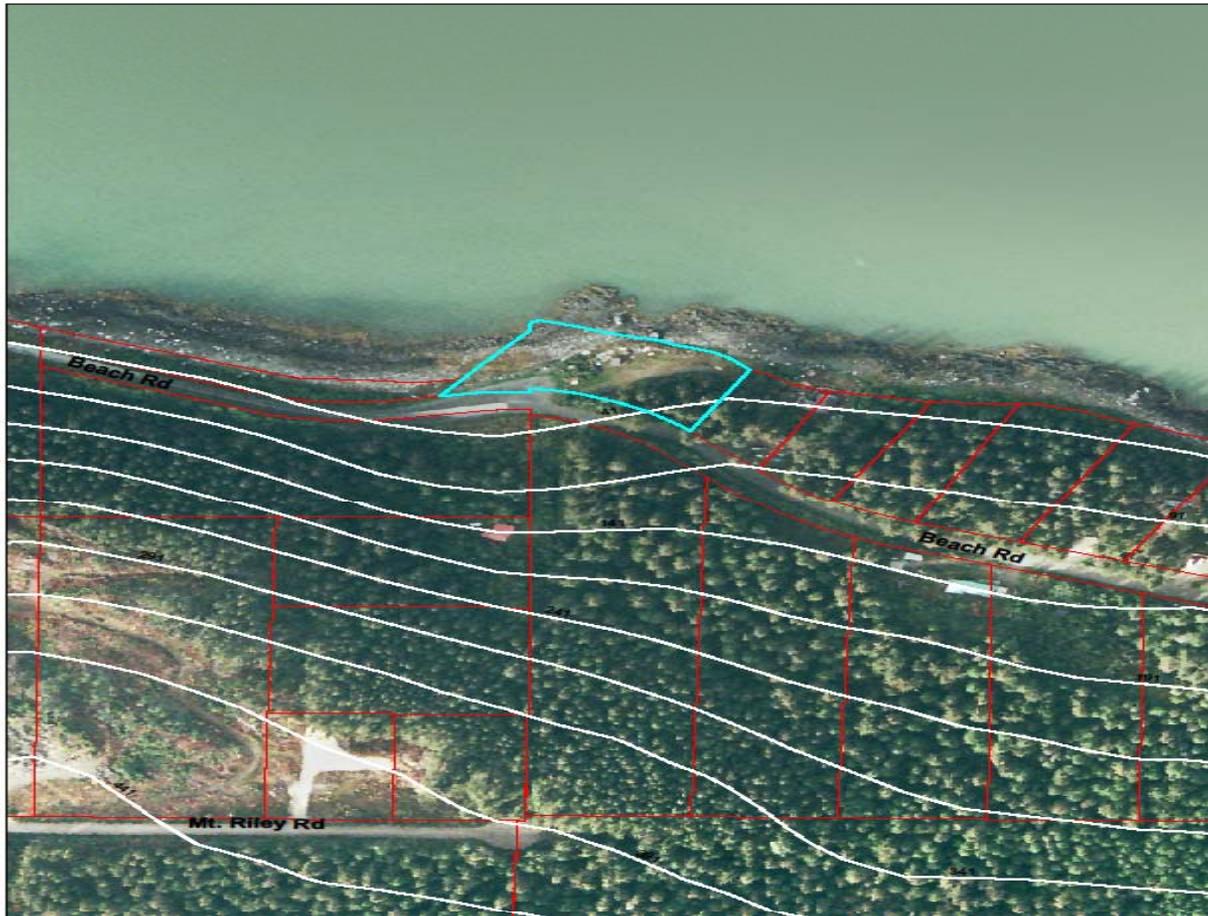
400 feet of elevation change to back of property



Schnabel property next door to Klukwan

Property has been cleared in the past

No known environmental problems



Beach Road

Another area with water access



Beach Road where it starts up hill

Flat property on the water

Private ownership

Unknown Purchase price

Needs Rezoned



Beach Road opens up past gate around corner

The flat area around the corner encompasses numerous owners of private parcels



Front Street below Moore House

Water access

Private ownership

Numerous property owners

Purchase price



Low Tide on Front Street property

We know of bad soil conditions in this area

Long ramp area at low tide

Property is available



Harbor Area

Borough owned property



Harbor Parking Area

Borough Owned

Cuts into limited parking area already in season



Planned improvement area for new ramp

Area already on Portage Cove Master Plan for boat ramp and drive down float and crane facility

Filling area for improvements, could we fill more?



Breakwater and transient float area

Already a lot going on in the area, too much traffic?

Close to harbor and facilities.



Canal Marine, Schnabel property

Access to existing ramp



Canal Marine

Could we get a permit to fill area?

Close to support facility

Close to Harbor



Behind Harbor Bar and Canal Marine

Large area available to fill

Keeps activities central to harbor



Possibility of over five acres with fill

RV Park



Canal Marine

Facility already being used for winter storage



Tank Farm

Contaminated area

Could be ten years or more to get access



Tank Farm

Large area
Cross busy highway

Beach Access



Lutak Road Properties

Some property for sale

Beach access

Large flat area near water with possibility of upland storage

Not zoned for industry



Lutak Road next to National Guard Building

This property is for sale

Not zoned industrial



Lutak Road

100 foot elevation change from sea level



Lutak Road across from Dolphin Rd

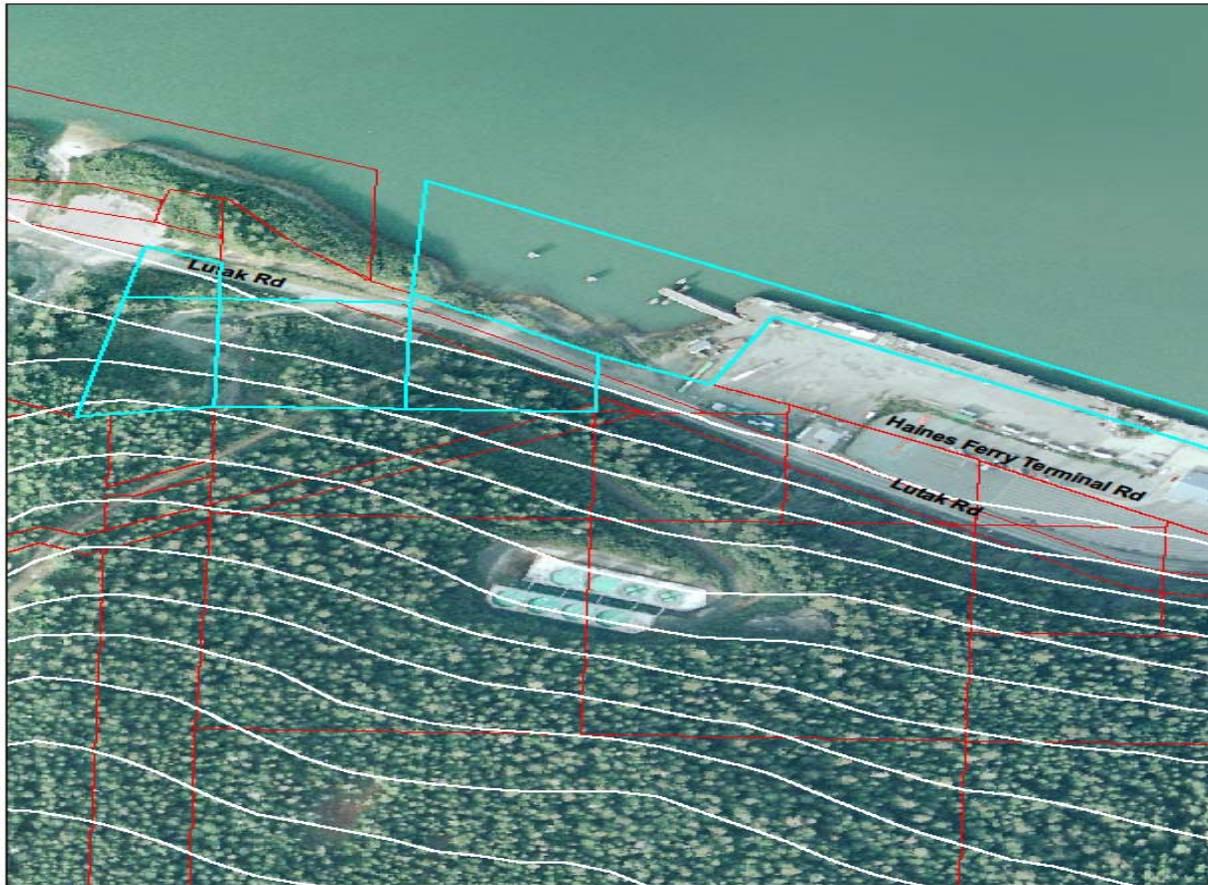
Area is flat and has been used for launch area



Lutak Road

Approximately 2 acres on water side of road

Private ownership



Lutak Dock, Borough and State Property



Lutak Launch Ramp area looking north

Property belongs to borough Ramp exists but needs improvements



Lutak Ramp

Will barge landing be in the way?

Area to maneuver vessels?



Lutak ramp

Ramp washes up with silt and gravel

Grade will have to be changed



Lutak Ramp Lay up area

Area to put a environmental pad
Temporary lay up area
Power to facility, no borough water



State Property across from Lutak Ramp

Looking from Lutak Road onto property
Some area cleared with a road access
Former gravel pit



State Property Upper Tier

Area is not level but could be leveled easily



Schaffer Property

Waterfront Access

Zoned Industrial

Purchase Price

Private property



State Property Looking across Lutak Road

Property across road is Schaffer property

Industrial zoned area

Access to water with three plus acres of area to work with



Schaffer Property

Privately owned must be purchased

Flat area

Water access



State Property and Schaffer Property

Five miles from town

Need to find water source to use or extend borough water and sewage

Opportunity to start small and grow if needed



Public Safety Building

Borough owned property

Large lay up area

Water and utilities



Public Safety Land

No waterfront access

In heavy traffic area

May need road permits to move vessels from ramp to here



Letnikoff Cove, Cannery

Private, State and Borough ownership

Water Access

Historical Use as a Haul Out



Letnikoff Cove

Private, State and Borough Ownership



Borough Launch Ramp and Harbor

Launch Ramp and Boarding Float already in place and some uplands storage area. No water or power, power is available.



Haines Packing Cannery

Historical boat haul-out area

Private ownership

Water Access



Letnikoff Cove

Large upland area
5 miles out of town

Bad winter weather
Community reaction



**Haines Borough
Planning Commission Meeting
August 8, 2013
MINUTES**

Approved

1. **CALL TO ORDER/PLEDGE TO THE FLAG** – Chairman **Goldberg** called the meeting to order at 6:30 p.m. in Assembly Chambers and led the pledge to the flag.
2. **ROLL CALL** – **Present:** Chairman Rob **Goldberg**, Commissioners Rob **Miller**, Andy **Hedden**, Don **Turner III**, Danny **Gonce**, Lee **Heinmiller**, and Robert **Venables**.

Staff Present: Xi “Tracy” **Cui**/Borough Planning & Zoning Technician III, Mark **Earnest**/Borough Manager, Carlos **Jimenez**/Director of Public Facilities

Also Present: Glenda **Gilbert**, Glenn & Joy **Adams**, Margaret **Friedenauer**, Ron **Horn**, Kristine **Harder**, Krista **Kielsmeier**, Neil **Einsbruch**, George **Campbell**, Patty **Campbell**, Edith **Von Stauffenberg**, Sara **Chapell**, etc.

3. **APPROVAL OF AGENDA**

Motion: **Turner** moved to “approve the agenda”. **Gonce** seconded it. The motion carried unanimously.

4. **APPROVAL OF MINUTES** – July 11, 2013 Regular Meeting

Motion: **Heinmiller** moved to “approve the July 11, 2013 Regular Meeting Minutes.” **Miller** seconded it. The motion carried unanimously.

5. **PUBLIC COMMENTS**

Chapell stated she would like to see the code updated to allow each household keeping more than 3 hens, without being required to obtain a conditional use permit. Currently the code allows the keeping of more than 3 small animals upon approval of a conditional use permit. **Chapell** said she recommends for the Planning Commission to consider amending the definition of “Agriculture, personal use”, which allows the keeping of up to 10 hens, and no roosters. Also, one of the goals in our Comprehensive Plan is to support local agriculture, gardening, and food production.

Goldberg said this topic will be discussed at the next regular meeting.

6. **CHAIRMAN’S REPORT** – None

7. **STAFF REPORTS**

Cui reported recent permitting and enforcement activities.

Cui stated she received a phone call from a citizen asking about the sign permit issued to Mike Ward’s bike shop. According to the code, total sign area per building wall shall not exceed 10 percent of the total square foot area of that building wall or 32 square feet, whichever is greater. The business sign “Bicycle Rentals” at the bike shop is 64 square feet, and the total square foot area of that building wall is more than 1,000 square feet. The citizen who called believes the building wall should just be the upper level, and he requested for the Planning Commission to verify this.

After reviewing the photo taken from the site, the Planning Commission concurred with the staff's decision.

8. **PUBLIC HEARINGS**

A. **Haines Presbyterian Church**

Goldberg opened the public hearing at 6:38 p.m.

Horn stated that he is appealing the enforcement order requiring the payment of a \$250 after-the-fact fee assessed by the Borough. The RV has been located on the Church property in prior years, and in each of those years, the Church obtained a permit. The failure to obtain a permit this year for the RV placed on the Church property was not willful, was not intentional, and was simply an oversight. There was not any notice or warning that the Church had failed to file a permit. **Horn** said a friendly phone call from the Borough could easily avoid this situation.

Goldberg closed the public hearing at 6:40 p.m.

Goldberg said he understands **Horn's** position. It is hard to receive an enforcement order without a warning. The Borough has the code, and has the staff to enforce the code. **Goldberg** said probably the Planning Commission can take a look at the code, and perhaps consider adjusting the fine structure at the next regular meeting.

Motion: Venables moved to "recommend the Assembly waive the \$250 after-the-fact fee being assessed to Haines Presbyterian Church." **Turner** seconded it. The motion failed 0 to 7 with all the Planning Commissioners opposed.

UNFINISHED BUSINESS - None

9. **NEW BUSINESS**

A. **Historic District/Building Review** - None

B. **Haines Borough Code Amendments – Title 18 Revisions**

1. **Clarify "Lodge" & "Vacation Rental" in HBC 18.20.020**

Miller suggested crossing out the word "typically".

Heinmiller suggested amending "more than one guest at a time" with "one or more guests at a time".

Motion: Heinmiller moved to "recommend the Assembly adopt the proposed draft ordinance amending HBC 18.20.020 to add definition of vacation rental and change definition of lodge; amending HBC 18.70.040 & 18.70.030(B) & 18.70.030(C) to add vacation rental to the zoning chart, Mud Bay Planning/Zoning District and Lutak Inlet Planning/Zoning District." **Gonce** seconded it. The motion passed unanimously.

2. **Construction Declaration in HBC 18.30.010**

Goldberg said the Planning Commission is considering expanding "setback regulations in townsite service area" Borough wide by adding setbacks and height restrictions to general use zone. Setbacks information can be required in the construction declaration form. However, HBC 18.30.010 requires a construction declaration should be filed within 60 days of the start of construction. The filing period could be a problem if construction starts before the construction

declaration is filed, and the buildings do not meet the proposed setback requirements. This proposed ordinance will resolve the problem.

Motion: Gonce moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.30.010(A)(2)(c) to adjust the filing period of a construction declaration.” **Hedden** seconded it. The motion passed unanimously.

C. Project Updates – None

D. Other New Business

1. Classification of Borough Lands for Sale – Primary School Subdivision, Lots 6 & 7

Gilbert said she has a client who has recently expressed interest in purchasing the Borough land which was formerly the old Primary School to build an Aspen Hotel. The new hotel will bring more job opportunities and increase the property tax revenue. She thinks it is the best use for those two lots.

Von Stauffenberg asked if the property is going to be up for sale for everyone in the general public to participate or is it just going with the proposal from Aspen.

Goldberg answered this is the very first step. The code requires Borough lands shall be classified for sale by the Assembly with the advice of the Planning Commission. The Planning Commission will recommend the Assembly either classify the property for sale or retain the property. The Assembly will make the decision.

George **Campbell** supports this proposal. He said this will be the best looking building on Main Street. Aspen has very good advertisements on the internet, so it will bring more people from all over the world to Haines.

Heinmiller said he wants the public to be aware of the fact the Planning Commission is just considering the disposal of Borough lands. It is not necessarily driven by requests for purchasing Borough lands. The goal of the Planning Commission is to determine what the best use of the Borough lands is in a long term.

Turner said the Planning Commission already recommended the Assembly classify those two lots for sale last year. He is still in favor of it.

Motion: Venables moved to “recommend the Assembly classify lots 6 & 7 for sale to the private sector.” **Turner** seconded it. The motion carried 5 to 2 with **Goldberg** and **Heinmiller** opposed.

Goldberg said he is not against the hotel. He thinks it is just not the best use for those two lots. The school probably needs more space for expansion in the future. Actually there are other private lands that can be considered for sale with an idea of building a hotel.

2. ADOT & PF Project – Haines Airport Drainage Improvement, Pavement Rehabilitation & Fence Reconstruction

Earnest stated the ADOT & PF, in cooperation with the FAA, requests comments regarding proposed improvements at the Haines Airport. The project is to improve airport safety and security, reduce current maintenance, resolve the drainage problems, and relocate the parking lot. ADOT & PF requests comments on the

proposed actions, particularly in regard to potential impacts to resources under Haines Borough jurisdiction.

Shields said one of the proposed actions in the project is to fill the East pond. He wondered why the pond needs to be paved over. East pond has a consistent supply of water. He is concerned for the loss of East pond, which has some of the best habitat for Boreal toads in the Haines Borough.

More discussion ensued.

Motion: **Gonce** moved to “recommend for the Assembly to support the Haines Airport project, and the Borough manager to work with Tim **Shields** and the Takshanuk Watershed Council to investigate the potential mitigation for the loss of East pond.” **Heinmiller** seconded it. The motion carried 6 to 1 with **Venables** abstaining.

3. ADOT & PF Project – Haines Ferry Terminal Improvements

Earnest stated the ADOT & PF has modified the design of the Haines Ferry Terminal Improvements, which will necessitate the issuance of a permanent easement (Parcel E-5) on the Borough’s portion of the Lutak Dock. The ADOT & PF has committed to pay the Borough fair market value for Parcel E-5. The ordinance is scheduled on the Assembly agenda for Public Hearings on August 13 and 27, 2013.

No motion was made.

11. COMMISSION COMMENTS

12. COMMUNICATION - None

13. SET MEETING DATES – The next regular Planning Commission meeting is scheduled for 6:30 p.m. on Thursday, September 12, 2013.

14. ADJOURNMENT– 8:16 p.m.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-323
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Amend Title 18 to clarify the definition for "Temporary Use" dwellings.	1. Ordinance 13-08-344 2. Additional Information from Chair of Planning Commission 3. Planning Commission Recommendation
Originator: Planning Commission	
Originating Department:	
Date Submitted: 7/24/13	

Full Title/Motion:
 Motion already on the Table: Advance Ordinance 13-08-344 to a second public hearing on 9/10/13. An amendment motion would be in order to change the hearing date.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:

Title 18 defines "temporary use" as a building or structure that is capable of being immediately moved, or a use which is for a limited time up to six months. Recreational vehicles, yurts, wall tents and similar structures are becoming more prevalent in Haines, and the planning commission recommends a code amendment to clarify the definition for temporary use dwellings. The ordinance was introduced on 8/13. On 8/27, following the first public hearing, the motion to advance it to a second public hearing failed. On 9/10, as allowed by code, a motion to reconsider passed followed immediately by a motion to postpone to this meeting. The planning commission will provide additional information.

Motion already on the floor: Advance Ordinance 13-08-344 to a second public hearing on 9/10/13. Debate can resume, but an amendment motion would be in order to change the hearing date.

Referral:

Sent to:	Date:
Recommendation:	Meeting Date:
Refer to:	

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 8/27/13
Meeting Date(s): 8/13, 8/27, 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE SECTION 18.20.020 TO DEFINE TEMPORARY USE DWELLINGS.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and if adopted with or without amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 18.20.020. Section 18.20.020 of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS TO THE CURRENT LANGUAGE
~~STRIKETHROUGH~~ ITEMS ARE DELETIONS

18.20.020 Definitions – Regulatory.

...

“Temporary use” means a building or structure that is capable of being immediately moved, or a use which is for a limited time up to six months. **Temporary use dwellings include recreational vehicles, yurts, wall tents and similar structures.**

...

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 08/13/13
Date of First Public Hearing: 08/27/13 – Failed to Get Enough Votes to Schedule Second Hearing
Reconsidered & Postponed to 9/24/13 09/10/13
Date of Second Public Hearing: ___/___/___

From: Rob Goldberg [mailto:artstudioalaska@yahoo.com]
Sent: Tuesday, September 17, 2013 10:17 PM
To: Julie Cozzi
Subject: Explanatory Material for PC Ordinance - Temporary Use Dwelling

Hi Julie,

Here are my explanations of the ordinances before the assembly:

Ordinance No. __-__-__ to add to the regulatory definition of "Temporary Use" in 18.20.020

The intention of this proposed ordinance is to clarify what types of structures are not allowed as permanent residences in the Haines Townsite. The sentence added to the definition is, "Temporary use dwellings include recreational vehicles, yurts, wall tents and similar structures." The important word here is "dwellings". Here are definitions from the Code: "Dwelling" means a building used primarily for residential occupancy. "Dwelling unit" means a residential use consisting of a building or portion thereof providing independent living, sleeping, cooking, bathroom and accessory uses.

Temporary dwellings are commonly used when someone is building a home and wants to live on site during construction. A permit is required for this, and is valid for up to 18 months.

The Code already sets a standard for permanent dwellings in the Townsite. Mobile homes and recreational vehicles are not allowed as permanent dwellings in the Townsite outside of mobile home or RV parks. Property values are also protected in 10.60.010: no use will be approved that will materially endanger the public health or safety or substantially decrease the value of property in the neighboring area. This concept is supported in the Comprehensive Plan in 7.13 Objective D: Protect homeowners' investments by minimizing adjacent incompatible land development.

The question that was raised at the Planning Commission's meeting was, "If the Code disallows mobile homes as permanent dwellings in the Townsite, why should it allow fabric structures such as yurts, wall tents, teepees and other similar structures?" The addition of "yurts, wall tents and similar structures" to the definition of "temporary use dwellings" answers this question by disallowing them as permanent dwellings in the Townsite. Yurts and other fabric structures are by their nature mobile. A yurt is defined as a fabric covered structure with a collapsible wooden frame, commonly used by nomadic peoples in Central Asia. They, like wall tents and teepees, are designed to be picked up and moved.

This ordinance does not prohibit yurts and other fabric structures from being used as dwellings outside of the Townsite.

This ordinance does not prohibit yurts and other similar structures from being used as an accessory use in the Townsite. Accessory use is defined in Code as "a use or structure customarily subordinate or incidental to, and located on the same lot with a principal use, building or structure, and specifically includes garages and required parking areas, storage structures, small parks or playgrounds, living quarters necessary for caretakers, guards or employee overnight accommodations. Small one-story structures (less than 120 square feet in floor area) for "temporary use" do not require a permit." As an accessory use, yurts would be allowed in the Townsite as yoga rooms, artists' studios, accommodations for guests and other accessory uses.

Code section 18.60.020 calls for the permanent nature of structures: G. Foundation. All buildings intended for residential or commercial use shall be placed on a permanent foundation. This section does not apply to accessory buildings such as tool sheds, wood sheds, etc., of 120 square feet or less in area, or temporary uses. Permanent foundations are also defined: "Foundation, permanent" means footings and foundations that shall be constructed of masonry, concrete; or treated wood as defined in the Uniform Building Code. Footings of concrete and masonry shall be of solid material. Foundations supporting wood shall extend at least six inches above the adjacent finished grade. Bearing walls shall be supported on masonry or concrete foundations or piles or other approved foundation systems of a sufficient size to support all loads. It is incumbent on the developer to assure that the foundation is properly designed and constructed. The Haines Borough accepts no responsibility for the stability or future salability of any building due to an improperly designed or constructed foundation.

If the Code is specific in calling for foundations to be permanent, shouldn't we specify that the dwellings placed on those foundations also be permanent? As the Code stands now, a person could lay down four concrete pier blocks, build a plywood floor, set up a wall tent and call it a permanent dwelling. Is this what we want for the Townsite? The Planning Commission thinks that a standard should be set. This ordinance does that.

Rob Goldberg
Haines Borough Planning Commission Chair

Haines Borough
**BOROUGH ASSEMBLY
ACTION REQUEST**

DATE: July 11, 2013

TO: Borough Assembly

FROM: Haines Borough Planning Commission

PLANNING COMMISSION ACTION: *M/S Miller* moved to “recommend the Assembly adopt the proposed draft ordinance amending HBC 18.20.020.” This motion passed 6 to 1 with Hedden opposed.

RATIONALE: Recreational vehicles, yurts, wall tents and similar structures are becoming more prevalent in Haines. The Planning Commission thinks the allowance of constructing a temporary use dwelling should be defined and clarified in different zone regulations.

PLANNING COMMISSION REQUEST: for the Borough Assembly to amend HBC 18.20.020 to read:

“Temporary use” means a building or structure that is capable of being immediately moved, or a use which is for a limited time up to six months. **Temporary use dwellings include recreational vehicles, yurts, wall tents and similar structures.**

SUBMITTED BY _____ (signature)


Rob Goldberg
Planning Commission Chairman



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-356
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Authorize Purchase of Sewer Jetter	1. Resolution 13-09-498 2. Quotes
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 9/16/13	

Full Title/Motion:
Motion: Adopt Resolution 13-09-498.

Administrative Recommendation:
The borough manager recommends adoption of this resolution.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 31,065.53	\$ 50,000 in CIP	\$ 0

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
The borough is in need of replacing a sewer jetter that has declining water pressure and is unreliable. Staff solicited quotes and recommends purchase from Jettors Northwest for \$31,065.53, including shipping. The FY14 CIP has \$50,000 specifically budgeted for this purchase.

Referral:

Sent to:	Date:
Recommendation:	Refer to: Meeting Date:

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 9/24/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-09-498

Draft

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Jettters Northwest in the amount of \$31,065.53 for the purchase and delivery of a sewer jetter.

WHEREAS, the Haines Borough is in need of replacing a sewer jetter that has declining water pressure and is unreliable; and

WHEREAS, Jettters Northwest has provided a quote of \$31,065.53 for the purchase and delivery of a sewer jetter; and

WHEREAS, the Haines Borough Assembly appropriated \$50,000 in the FY14 budget's Capital Improvement Projects (CIP) fund for a sewer jetter,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to contract with Jettters Northwest in the amount of \$31,065.53 for the purchase and delivery of a sewer jetter.

Adopted by a duly-constituted quorum of the Haines Borough Assembly on this _____ day of _____, 2013.

Stephanie Scott, Mayor

Attest:

Julie Cozzi, MMC, Borough Clerk



5615 W MARGINAL WAY SW
 P O BOX 24348
 SEATTLE, WA 98124-4348
 1-800-950-4265

100 MT ROBERTS ST
 JUNEAU, AK 99801
 1-907-586-3790
 1-800-585-6102

Rate Estimate LW07

Prepared For: KRISTA

Date: September 19, 2013

Phone: 907 766-2257

Origin: SEA

Fax:

Destination: HNS

Email:

Project Name:

PO Number:

Estimated Ship Date: September 19, 2013

Prepared By: Connie Ward
 cward@lynden.com

Phone: 907 766-2221

Fax: 907 766-2639

Qty	UOM	Freight Description	Dimensions (LxWxH)	Weight	Rate	Charge
1	PC	SEWER JETTER	18' x 7' x 5'6"	3,000		
		FREIGHT CHARGE		3,000	30.62	918.60
		FUEL SURCHARGE			19.00 %	174.53
TOTAL CHARGES:						1,093.13

TERMS AND CONDITIONS:

- Item does not apply to aircraft engines or parts.
- If through no fault of carrier vehicle or machinery is received containing more than 1/4 tank of fuel, charges per Item 987 will be assessed for tank drainage.
- If through no fault of carrier vehicle or machinery is inoperable, charges per Item 987 will be assessed at origin and/or destination for loading and off-loading.

Green is good! Do your part in saving the environment by accessing documents electronically. Go to <http://www.lynden.com/ez-signup.html> and sign up for EZ Commerce, making it easier to conduct business at your fingertips. You can request pickups, generate shipping documents, track shipments, receive invoices and make payments electronically. Service is free, sign up today!

This estimate has been prepared based on information provided on this date and is valid for 30 days. Charges may differ from those contained herein due to changes in weight, dimensions, description of goods, or requested services. Fuel surcharge is estimated at the level in effect on this date, is subject to change without notice and will be billed at the level in effect in Carrier's published tariff on the date of shipment. All services are subject to the standard terms and conditions of our tariff (available at www.lynden.com/aml/100terms.htm) and the bill of lading published therein. Any bill of lading or other shipping document issued shall not be effective to the extent it conflicts with our terms and conditions. By shipping with Alaska Marine Lines, Inc., you are acknowledging acceptance of our terms and conditions.

28,725 -
JETTERS NORTHWEST 1-877-901-1936

Eagle-600/23kE Trailer Jetter Specifications

(a) General Features & Specifications

- **23 GPM / 3000 PSI** (model 6223KU-600TR)
- **Dual 31 Horsepower Kawasaki engines, Liquid-Cooled**
- **Udor super Duty Pumps and Gearbox drives**
- **600-gallon Water Tank capacity**
- **36-inch wide storage compartment**
- **500 ft. x 5/8" I.D. Jetting Hose**
- **100-feet of 3/4" tank-supply Hose optional**
- **2-inch Tank-Fill Pipe with Air-Gap**
- **Convenient controls grouped together at the rear Operator's Station**

(b) Rear-Mounted Operator Controls

All Jetting controls are conveniently mounted at the rear of the Jetter for efficient and safe operation. Rear Controls Include:

- **Dual-Engine Key Start and Stop**
- **Synchronized engine throttle**
- **Hose reel Wind/Unwind**
- **Reel-Speed Adjustment**
- **Jetting-Pressure Adjustment**
- **Jetting Flow-Control, pressure/tank return**
- **variable pulse control**
- **Cold-Weather Recirculation Port**

(c) Jetting Hose

- **Excellent resistance to cuts, gouges, and abrasion**
- **Bonded construction for maximum kink resistance**
- **4000-PSI working pressure rating**
- **10,000-PSI burst-pressure**



- **10-foot Safety Leader-Hose (orange color)**
- **"Tiger-Tail" Guide for Hose-Protection**

(d) Heavy Duty Trailer

- **Heavy Duty 5" x 2" Tubular steel Frame with LIFETIME FRAMEWORK WARRANTY**
- **Tandem-Axle; 10,400 GVW (dual 5200-lb axles)**
- **Chrome Wheels (6-lug) standard**
- **Recessed LED Lighting**
- **A-Frame tongue**
- **Weld-mounted "drop leg" Jack**
- **Extra Durable Epoxy Paint**
- **Flat-top Fenders allow for tool-mounting**
- **Step-Style fender supports**
- **Integral tank mounting**
- **Adjustable-height Hitch**
- **2-5/16" ball coupler standard, Pintle optional**
- **Electric braking system**

(e) Udor Super Duty WaterJet Pumps

- **Triplex ceramic plunger pump**
- **Low-RPM gearbox speed-reduction**
- **Long-lasting U-seal design**
- **Water-bypass Pulse-Port, remotely controlled**
- **Tapered roller bearings**
- **Bronze connecting rods**
- **5-year limited Warranty through UDOR USA**

(d) Jetting Nozzles

- **4 Stainless-Steel Nozzles included, matched for flow, pressure, and hose length**
 - **Penetrator: 1 Front/4 Rear (20deg)**
 - **Flusher: 6 Rear (35deg.)**
 - **Piercer: 3 Front (10deg.)/6 Rear (35deg)**
 - **Rotator: 2 Rear rotating jets**
- **Nozzle-Extension (anti-turnaround tool)**
- **Hose-end adapter for connecting JNW accessories**

- ***Includes Nozzle Storage box and orifice cleaner***

(e) Jetting Reel

- ***Heavy duty bearing supported reel***
- ***Large diameter drum, 600ft. x 5/8" hose-capacity***
- ***1-piece flow through axle design***
- ***Welded framework***
- ***High-Torque Motor (Explosion-Proof)***
- ***Variable speed reel control***
- ***Power wind and unwind standard***
- ***Elevated mounting for operator comfort***
- ***Dirty tools-basket below reel***
- ***Pivoting hose-guide with nylon rollers***

(f) Storage Compartment

- ***Heavy Gauge steel construction***
- ***Convenient rear-mounted location***
- ***Secure lockable handle***
- ***36-inch wide, with single drop door***

[Click here for warranty information](#)

Carlos Jimenez

From: Steve Jones, JETTERS NorthWest <steve@jettersonorthwest.com>
Sent: Tuesday, August 27, 2013 2:05 PM
To: Carlos Jimenez; Scott Bradford
Cc: 'John'
Subject: RE: Sewer JETTER Quote/Specs for Eagle-600/23kE to Haines Borough
Attachments: Flyer JETTER-Trailers Eagle-300 & 600.pdf; Eagle-600gal Jetter Trailer L-side f.jpg; Eagle-600gal Jetter Trailer R-side rear.jpg; Eagle-300 & 600 Jetter Rear Operators View.jpg; SPECIFICATIONS Eagle-600 Trailer Jetter 23gpm 3000psi.doc; - Jetting Tools & Nozzles catalog-13.pdf; Brouchure JETTERS NorthWest Full Line.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

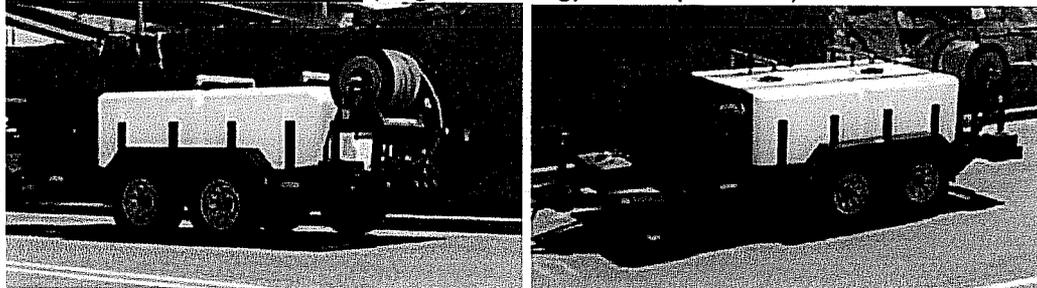


*The toughest jettets available for sewer & drain cleaning
With expert advice and service ... for over 30 years!*

Hello Carlos & Scott and thanks for calling Friday about our Sewer-Jetter *Eagle-600* Trailers. Here is the detailed quote/information you requested:

- Attached is a printable-flyer and several photos
- Attached is a detailed Specifications-Sheet (MS-Word document allows for specification cut/paste)
- Below is your quote, plus options, and the *WH-Warthog* Root/Grease-cutter Jetting-Tool

Eagle-600 Trailer-Jetter ("High-Flow" 23gpm/3000psi model):



\$ 27,495.00 Eagle-600/23kEm 23gpm/3000psi Trailer-Jetter (model 6223KU-600TR)
Includes 500' of 5/8" ID Jetting-Hose, 4-Nozzles, & more (see below detail)

Shipping quotes available on request

Optional UPGRADES:

- *Beacon Light (installed): add \$350.00*
- *Anti-Freeze Circulation/Recovery System: add \$700.00*
- *12-volt Outlet (for your spotlights): add \$180.00*

Root/Grease-Cutter Nozzle/Tool "Warthog-WH":

High-flow WH-model Warthog with Skid-body and Maintenance-Kit

- Add \$1,247.40 (discounted from \$1386.00 "with jetter" 10% Tools-discount)
- Cuts out Roots & Grease, also intensely scours the pipe and clears other blockages
- Includes \$65.00 Maintenance/Service Kit

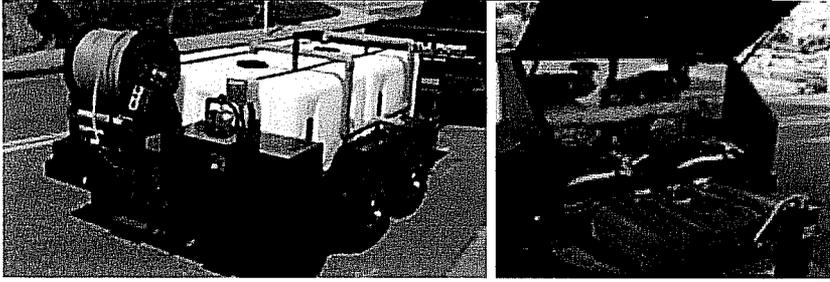
Take 10% off optional Tools/Accessories when adding to the Jetter (see attached "Tools & Nozzles" catalog for Portable-Hose/Reels, etc.)

Payment-Terms:

-Municipal Purchase Orders Welcome (Net-15 or 30 day terms)

-Visa, Mastercard, American Express, & Paypal welcome

EAGLE-600 Trailer-Jetter PICTURES & FEATURES:

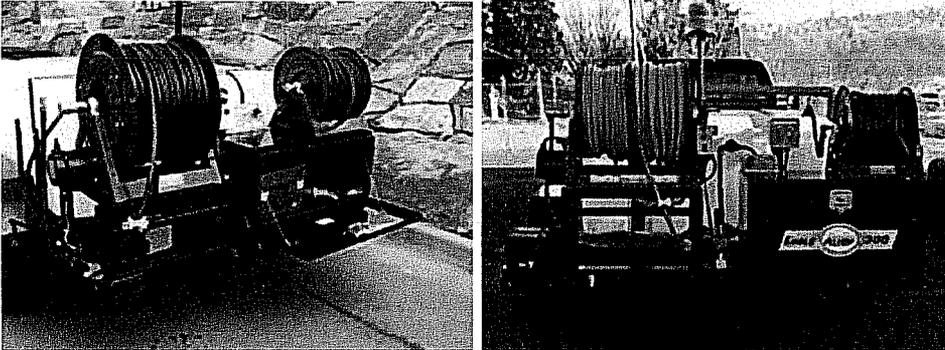


Front-End Enclosure around the pumps/engines

- Liquid-Cooled / Fuel-Injected *Kawasaki* engines (62 horsepower combined)
- 600-Gallon Water-capacity
- Tandem-Axle trailer with *Lifetime Frame Warranty* (10,400gvw)
- 500' of 5/8" Jetting-Hose
- 10' Safety Leader-Hose (orange color)
- 2" Fast Tank-Filling Pipe ("air-gap" type)
- Lockable *Pro-Tech* Tool-Bin
- 5-piece Nozzle-Set, & TigerTail hose-protector
- Please see the attached specification-sheet & pictures
- Optional upgrades listed below

- **All of the controls are at the rear by the hose-reels:** Safe and handy to operate controls include: engine start & throttle, jetting-flow control, pressure-regulator, pulsation-control, hose-reel rewind/payout, hose-reel speed
- **We have the most heavy-duty trailer on the market in this class - LIFETIME FRAMEWORK WARRANTY:** The *Eagle-600* trailer is built from 5"x2" rectangular tube-steel with extra gusseting and flat-top fenders so sturdy that you can jump up and down on them. We use rectangular tube-steel as it is stronger than channel-iron and resists flexing better
- **"No Shortcuts" design; we do not take little shortcuts to save cost!**
Examples: The Pressure-Controls and Gauge are hard-mounted to the unit (not hanging from the plumbing) ... The Pulsation-Control is panel-mounted at the operator's station (not screwed into the pump-head) ... Overhead 2" fill-pipe *AND* a Fill-Hose/Reel are included as standard equipment along with a Float-Valve to keep the water-tank from overflowing

Operator's station (optional Beacon-Light & 2nd reel shown on right)



Why 2 Gas-Engines instead of 1 bigger diesel engine?:

- The 2-engine/2-pump setup is very versatile for jetting large and small pipes: Many smaller jetting jobs can be done by running just 1 of the 2 engines which saves wear and is better than having a big diesel engine running at idle to keep the jetting-flow down on small jobs. Start the second engine/pump and you double your GPM for jetting larger pipe
- Lower-horsepower gas engines have less emission issues (diesel engines are often subject to many state regulations)

VIDEO WEB-LINK – click on the link below to see several videos on our YouTube site:

<http://www.youtube.com/user/JETTERSnorthwest>

WEB-PAGE LINK – click on the link below to see the jetter's web-page, picturing many features:

http://www.jettersonorthwest.com/html/eagle_600.html

Please feel free to ask questions; my jetter-design partner John McBride and I have over 40 years combined experience in high-pressure jetting systems – we are here to help!

Steve JONESIE Jones
Sales Director, since 1989

John McBride
Service & Production Mgr., since 1990

206-786-4344 Direct 206-255-0580 Direct
steve@jettersonorthwest.com john@jettersonorthwest.com

JETTERS NorthWest Toll Free: **1-877-901-1936**
a division of Seattle Pump & Equipment Co. (est. 1952)

Website: www.jettersonorthwest.com

Video Site: www.youtube.com/user/JETTERSnorthwest



- JETTERS & NOZZLES for Drain/Sewer Cleaning - CAMERAS for pipe inspection

To open the attached PDF files you must have [Acrobat® Reader®](#) installed on your computer/device. Click on the blue link to download
Prices in US dollars, FOB Seattle, WA 98119

From: Carlos Jimenez [<mailto:cjimenez@haines.ak.us>]

Sent: Friday, August 23, 2013 10:45 AM

To: steve@jettersonorthwest.com

Subject: contact for Haines Borough

sbradford@haines.ak.us

cjimenez@haines.ak.us

Thanks,

Carlos Jimenez
Director of Public Facilities
Haines Borough
Office: 907-766-2257
Cell: 314-0648

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2013.0.3392 / Virus Database: 3211/6598 - Release Date: 08/22/13

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- Model 743 Hydro-Jet
- Model 746 Hydro-Jet
- Hi-Flow Ultimate Warrior Hydro Jetter
- Ultimate Warrior Hydro Jetter
- Warrior Hydro Jetter
- Model 740 Hydro Jetter
- Model 740 Hydro Jetter Skid Mount
- Model 740 Hydro Jetter (Propane)
- Soldier Hydro Jetter
- Model 758 Hydro Jetter
- Model 758 Hydro Jetter Skid Mount
- Model 738 Hydro Jetter
- Model 738 Hydro-Jetter Skid Mount
- Model 727 Gas Engine Mini Jetter
- Model 727 Gas Engine Mini Jetter (Propane)
- Model 717 Electric Mini Jetter

Sewer Camera Equipment

Root Cutters

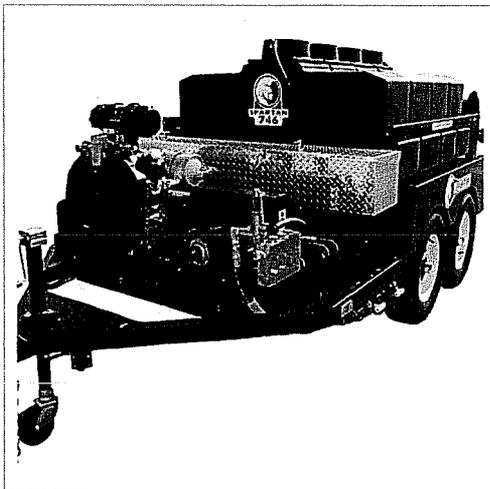
Trenchless Pipe Replacement Equipment

Parts

Accessories

Drain Snakes

Sewer Nozzle and Jetting Hose Guide



Model 746 Hydro-Jet

Part Number: 74600000

Financing as low as

Price: \$27,995.00

\$568 / month

All prices current

Profit and Payback Calculator

Find Your Local Spartan Territory Manager >

Spartan's new dual axle hydro-jetter delivers the power of 4,000 PSI to clean any size pipe to 15" plus 12 GPM of flow to move the debris downstream, while delivering over an hour of uninterrupted cleaning time from the 600 gallon water tank.

Download Product Manual

View Product Details

Quantity

1

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FEATURES + SPECS

PARTS

KEY FEATURES

- Tripex ceramic plunger pump delivers 4,000 PSI @ 12 GPM
- Adjustable pump pulsation for maximum cleaning distance
- Power hose rewind
- Electric start engine
- Manhole hose protection
- Dual axle chassis
- 13" tires with spoke wheels
- 600 gallon baffled water tank
- Shut down protection for low water conditions
- Low oil pressure indicator light
- Air purge system protects against cold weather conditions
- Wash-down gun and lance
- 8-gallon fuel tank or LP tank mount
- Hydrant hose connection with air gap

SPECS





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- COLD WATER TRAILER UNITS
- COLD WATER JETTER #1 (NEW)
- ENCLOSED TRAILER UNITS
- SPROCKETS
- REPAIRING HYDRO EXCHANGERS
- ENGINEERING
- NOZZLES
- ACCESSORIES
- DIAGNOSIS
- DETERGENTS
- FINANCING

Cold Water Jetter II

Xtreme Pro Premium Cold Jetter Tandem Axle
35 HP Vanguard Motor with Electric Start

- Full Remote Control
- Pump Saver System
- TBDS™ (Total Belt Driven System)
- Chemical Application System
- Quick Antifreeze System

POWERFUL
BUILT TO LAST
BEST WARRANTY

Arrives Fully Loaded and Turn Key Ready.
 *Output is determined by evaluation, nozzle size and motor / pump RPM. **Pricing does not include freight.

Call NOW to order. In stock and ships in days!



Your choice of trailer color:
 Red Black Blue Safety Yellow

OVERVIEW

HotJet's Xtreme Flow Drain Line Jetters are engineered for the Professional Rooter and Plumber Companies and Smaller Cities. Our Jetters are built to tackle the toughest blockages and easy to operate and priced right! This jetter will handle small lateral lines with the jumper hose assembly as well as larger lines up to 12". This Jetter includes our exclusive engineering features and the best warranty in the industry!

PUMP & ENGINE

- 35 HP Vanguard Motor with Electric Start
- Battery & Battery Box
- Rear Mounted Throttle Control
- General Belt Drive Ceramic Plunger Pump
- 14 Gallon Gasoline Tank with Fuel Gauge

KEY SPECS

Output	8.5 GPM
PSI	3,600 PSI
Engine	35 HP Vanguard
Drive	Triple V-Belt
Trailer Size	4' X 12' Deck
Trailer	Tandem Axle
Axle Rating	2 X 3,500 LB.

JETTER ACCESSORIES

- 1 - 12 Volt, Single Speed Electric Hose Reel
- 1 - 300' 3/8" Low Friction Sewer Hose
- 1 - Vacuum Pump Assembly
- Adjust Pressure & Flow with Throttle Control
- Pulsation Controls - Hammer Valve
- Ball Valve Water Flow Operation
- 3 - 3/8" Sewer Nozzles, 1 Ram, 1 Laser

EXCLUSIVE ENGINEERING FEATURES

- Antifreeze System
- Twin Filter System
- Pump Saver System
- Soap Injection System
- TBDS (Total Belt Driven System)

TRAILER SPECIFICATIONS

- Rugged, Specially Designed Compact Trailer
- Diamond Plate Floor 4' x 12' Deck
- 330 Gallon, Poly Water Tank with Plumbing
- 2" Fast Fill Stand Pipe
- 2 5/16" Ball Required on Tow Vehicle
- DOT Lighting with round 7 way connector
- Dual Axle Electric Brakes
- Chrome Wheels & Rear Lighting Included

STANDARD FEATURES

- Rear LED Lighting
- Front Diamond Plate Tool Box
- Safety Strobe Light
- Chrome Wheels
- Fill Hose Reel
- 100' HD Fill Hose

AVAILABLE UPGRADE OPTIONS





Solid State Remote Control
Call for Details



3/8" Warthog Nozzle
Custom Drilled
Call for Details



Signage Package For Sides
Call for Details



Upgraded hose reel with variable speed & guide arm available with thumb control or foot control
Call for Details



Enclosed Trailer
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Extra Jumper Hose Reel & 100' 1/4" Hose for Laterals
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Side Tool Boxes
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Pump Output Upgrade Options Available
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Your choice of trailer color:
 Red Black Blue Safety Yellow

Cold Water Jetter II

**Xtreme Pro Premium Cold Jetter
Tandem Axle
35 HP Vanguard Motor with Electric Start**

- Full Remote Control
- Pump Saver System
- TBDS™ (Total Belt Driven System)
- Chemical Application System
- Quick Antifreeze System

**POWERFUL
BUILT TO LAST
BEST WARRANTY**

Arrives Fully Loaded and Turn Key Ready.
Call NOW to order. In stock and ships in days!
Output is determined by evaluation, nozzle size and motor / pump RPM. **Pricing does not include freight.



OFFICIAL LICENSED VENDOR



OFFICIAL LICENSED RETAILER



OVERVIEW

HotJet's Xtreme Flow Drain Line Jetters are engineered for the Professional Rooter and Plumber Companies and Smaller Cities. Our Jetters are built to tackle the toughest blockages and easy to operate and priced right! This jetter will handle small lateral lines with the jumper hose assembly as well as larger lines up to 12". This Jetter includes our exclusive engineering features and the best warranty in the industry!

BROCHURE



PRODUCT SPECS



PUMP & ENGINE

- 35 HP Vanguard Motor with Electric Start
- Battery & Battery Box
- Rear Mounted Throttle Control
- General Belt Drive Ceramic Plunger Pump
- 14 Gallon Gasoline Tank with Fuel Gauge

JETTER ACCESSORIES

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- Pulsation Controls - Hammer Valve
- Ball Valve Water Flow Operation
- 3 - 3/8" Sewer Nozzles, 1 Ram, 1 Laser

TRAILER SPECIFICATIONS

- Rugged, Specially Designed Compact Trailer
- Diamond Plate Floor 4' x 12' Deck
- 330 Gallon, Poly Water Tank with Plumbing
- 2" Fast Fill Stand Pipe
- 2 5/16" Ball Required on Tow Vehicle
- DOT Lighting with round 7 way connector
- Dual Axle Electric Brakes
- Chrome Wheels & Rear Lighting Included

KEY SPECS

Output	8.5 GPM
PSI	3,600 PSI
Engine	35 HP Vanguard
Drive	Triple V-Belt
Trailer Size	4' X 12' Deck
Trailer	Tandem Axle
Axle Rating	2 X 3,500 LB.

EXCLUSIVE ENGINEERING FEATURES

- Antifreeze System
- Twin Filter System
- Pump Saver System
- Soap Injection System
- TBDS (Total Belt Driven System)

STANDARD FEATURES

- Rear LED Lighting
- Front Diamond Plate Tool Box
- Safety Strobe Light
- Chrome Wheels
- Fill Hose Reel
- 100' HD Fill Hose

AVAILABLE UPGRADE OPTIONS



Price 875.00
Date 26 995



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-355
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Authorize Purchase of Fire Tanker Truck	1. Resolution 13-09-499 2. Purchase Order and Quote
Originator: Fire Chief Scott Bradford	
Originating Department: Fire Department	
Date Submitted: 9/16/13	

Full Title/Motion:
Motion: Adopt Resolution 13-09-499.

Administrative Recommendation:
The borough manager recommends adoption of this resolution.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 85,360	\$ 150,000	\$ 0

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
------------------------	--

Summary Statement:
The Haines Volunteer Fire Department's existing tanker truck is over 50 years old and is failing. The assembly in an FY13 budget amendment appropriated \$75,000 from the equipment sinking fund and \$75,000 in donations from the Haines Volunteer Fire Department for the purchase and delivery of a used tanker truck not to exceed \$150,000. Red Truck Sales International, Inc. has provided a quote of \$80,000 for the purchase of a used Kenworth tanker truck and has agreed to contribute \$5,000 toward the \$10,360 in shipping costs to the Haines Borough, bringing the total contract to \$85,360.

Referral:

Sent to:	Date:
Recommendation:	Meeting Date:
Refer to:	

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 9/24/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-09-499

Draft

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Red Truck Sales International, Inc. in the amount of \$85,360 for the purchase and delivery of a Kenworth tanker truck.

WHEREAS, the Haines Borough is in need of replacing a tanker truck that is failing after nearly 50 years of operation; and

WHEREAS, Red Truck Sales International, Inc. has provided a quote of \$80,000 for the purchase of a Kenworth tanker truck; and

WHEREAS, Red Truck Sales International has agreed to contribute \$5,000 toward the \$10,360 in shipping costs to the Haines Borough, bringing the total contract to \$85,360; and

WHEREAS, the Haines Borough Assembly in an FY13 budget amendment appropriated \$75,000 from the equipment sinking fund and \$75,000 in donations from the Haines Volunteer Fire Department for purchase and delivery of a used tanker truck not to exceed \$150,000; and

WHEREAS, the fire department donated funds from State Revenue Sharing; and

WHEREAS, the Borough's Fire Chief recommends the purchase be contingent on an on-site inspection by Borough Mechanic-Operator Jonathan Sheets to assess the condition of this used vehicle,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to contract with Red Truck Sales International, Inc. in the amount of \$85,360 for the purchase and delivery of a Kenworth tanker truck provided an on-site condition assessment by the borough mechanic is satisfactory.

Adopted by a duly-constituted quorum of the Haines Borough Assembly on this _____ day of _____, 2013.

Stephanie Scott, Mayor

Attest:

Julie Cozzi, MMC, Borough Clerk



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 Police Dept. 907.766.2121 • (fax) 907.766.2128
 Fire Dept. 907.766.2155 • (fax) 907.766.3373

PURCHASE ORDER

DATE: _____
PURCHASE ORDER - NO: _____

VENDOR: *Red Truck Sales International*

Attn: _____
 Name: *Michael G. Shaughnessy*
 Address: *1600 Deer Park Avenue*
Suite F Deer Park, New York 11729
 phone: *855-733-8785*
 Email: ~~redtrucks~~ *redfiretrucks@optonline.net*

DEPT/CIP/Grant: *Fire*
 G/L: _____
 % or Amt: *1/2 Fire 1/2 CIP*
DEPT/CIP/Grant: *Sinking fund*
 G/L: _____
 % or Amt: _____
DEPT/CIP/Grant: _____
 G/L: _____
 % or Amt: _____

Quantity	Unit	Item / Description	Unit/Price	Total Amount
		<i>Truck (Tanker)</i>		<i>80,000</i>
		<i>Requires 2,500 Refundable</i>		
		<i>Deposit</i>		
		<i>Shipping to AML</i>		<i>1,875</i>
		<i>Shipping to Haines AML</i>		<i>3,485</i>
			SUB-TOTAL:	
			SHIPPING:	
			TOTAL:	<i>85,360</i>

Shipping Method: **Best Way** **UPS:** **2nd Day** **Ground** **USPS:** **Priority** **Parcel**
 (Check all that apply) **AML** **Other - Specify:** _____

Payment Method: **Credit Card** **Direct Bill** **Other - Specify:** _____

Purchase Order Prepared by: *Scott Bradford*
 Printed Name

Scott Bradford
 Signature

Ordered/Purchased by: _____
 Printed Name

 Date Ordered/Purchased

Approval Signatures, if needed:

Authorized Signer _____

Date _____

Borough Manager _____

Date _____

Shipping Costs		drive back		Inspection only + ship back	
Flight to New York	700-1100		800	1600	1600
meals for inspection visit	55	3	165	165	165
rooms for trip to NY	155	3	465	465	465
	155	-1	-155		
meals for drive mobe truck	55	6	330		
rooms for drive mobe truck	120	5	600		
truck fuel	\$2,745 2900 miles		3000		
tire chains	retail 635	970	1605		
	Parts Place 490	635			
flight SEA JNU			500		
			\$ 10,795	\$ 12,590	\$ 5,715
					\$ (5,080)
shipping truck to SEA	Best Way:	6875	6875	6875	6875-5000=1375
barge truck to HNS	Best Way:	6500	3485	3485	3485 AML

Accessories

radio	1500
door decals	800
Light bar & siren	3000
Tire chains	1300

Best Way	\$ 6,875		
LL Smth Trucking	\$ 7,997		
Alaska West Express	\$ 10,400	drive on	drive on
United Motor Freight	\$ 9,740		United crane on
			8330
			610
			800
			200
			7300
			610 fuel
			800 permit
			200 tarp
			9740
			8710

Scott Bradford

From: Daniel Gonce [dgonce@aptalaska.net]
Sent: Tuesday, September 03, 2013 9:10 AM
To: Scott Bradford; CapTim; Larry Jurgeleit
Subject: FW: 3,500 Gallon Tanker under \$100,000
Attachments: 1989 4 Guys 3500 Gallon Tanker.JPG

Just got this after I have been gone. I will follow up with Jeremy to see if it is available. I will let you know. Maybe we should let the Manager know that we are looking at an option?...?

Danny Gonce, FF1, EFF4, ETT
Engineer Captain
Haines Volunteer Fire Department
Haines, Alaska

From: Jeremy McCoy [mailto:jmccoy@bmfalco.com]
Sent: Tuesday, August 27, 2013 12:42 PM
To: Danny Gonce
Subject: 3,500 Gallon Tanker under \$100,000

Hi Friends

Here it is! Big water tankers on the used market for under \$100,000 are some of the rarest and most in demand trucks that we sell. This 1989 Kenworth 4 Guys Tanker with a PTO pump just hit the market with low miles and is priced at \$80,000. I've attached a picture of this truck for you and here are the specs:

- **1989 Kenworth 4-Guys Tanker**
- **Detroit 8V92TA Diesel Engine - 460 HP**
- **Allison Automatic Transmission**
- **16,848 Original Miles / 2, 086 Hours**
- **2 Man Commercial CAB / JAKE Brake**
- **Hale 350 GPM PTO Pump - Certified 8/2012**
- **3,500 Gallon Stainless Steel Baffled Tank**
- **2,100 Gallon Porta-Pond (Brand new 2012)**
- **10" Rear Dump / (2) 6" Side Dumps**
- **(2) Rear Tank Fills / (2) Discharges**
- **Hose Capacity - 50' of 3", 200' of 3"**
- **(2) Front Spots / On-Board Air Compressor**
- **KUSSMAUL Auto-Charging System**
- **Dual Air Horns / Dual Rear Drive Axles**
- **New Rear Tires**
- **Specs - Length - 29', Width - 8', Height - 10' 8"**
- **Wheel Base - 207", GVWR - 64,080 LBS**
- **Detailed Service Records & Manuals Available**
- **\$80,000.00**

If you are interested in this truck just let me know and I'll get additional info to you ASAP.

If you no longer want to receive emails from me about tankers and pumper/tankers just reply to this email and let me know and I will take you off of my list.

Thanks again for letting me work with you on your truck search!

RED TRUCK SALES INTERNATIONAL INC

1600 Deer Park Avenue
Suite F
Deer Park, New York 11729
(Toll Free) 855-Red-Truk

Purchase Contract

Purchase contract agreement between Red Truck Sales International, Inc. and the Haines Volunteer Fire Department located at 217 Haines Highway PO Box 1209 Haines, AK 99827 Dated 09-10-13 1989 Kenworth 4-Guys Stainless Steel Tanker VIN # M533098 (Chassis #)

Terms & Conditions:

1. **Price** – the agreed upon price is (\$ 80,000.00) EIGHTY THOUSAND DOLARS AND NO CENTS.
2. **Shipping** – RTSI will contribute \$5,000.00 FIVE THOUSAND DOLLARS towards the shipping cost whether you use our recommended shipping company (Best Way) or your own.
3. **Warranty**- RTSI guarantees that said vehicle will be in acceptable operating condition upon delivery.
4. **Serviced and PM** – vehicle will be fully serviced prior to delivery.
5. **Records**- all available service records and manuals will accompany said vehicle upon delivery.
6. **Equipment** – An addendum will follow with a detailed list of equipment that will be staying on the unit. This addendum will be produced prior to final payment.
7. **Deposit** – a \$2,500 .00 refundable deposit is required to secure said vehicle.
8. **Inspection** – Haines VFD will be given the opportunity to inspect vehicle prior to purchase and delivery. RTSI will provide transportation from one of our local airports directly to the fire house for your inspection.
9. **Release Date** – Attentively December 2013 or sooner, we will provide the exact release date prior to final payment.
10. **Balance Due** – Final payment in the amount of (\$ 77,500.00) SEVENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS and no cents will be wire transferred to the account of RTSI three days prior to release.
11. **Wiring Instructions** – account of Red Truck Sales International, Inc., Account # 7928555791, ABA # 026013673, bank is TD Bank. Britney Mc Cormick, Branch Manager is available to assist, at 631-242-0038.
12. **Refund** – In the unlikely event this unit was not able to be delivered; all funds received would be refunded within 5 business days.
13. **Title** – a clear title or Certificate of Origin will accompany the truck.
14. **Additional Warranties** – once this vehicle is inspected, approved and delivered, no further warranties whether written or implied will apply to this vehicle.

Michael G. Shaughnessy
Red Truck Sales International, Inc.
Michael G. Shaughnessy

Haines Volunteer Fire Department



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-352

Assembly Meeting Date: 9/24/13

Business Item Description:		Attachments:
Subject:	Add Vacation Rentals to the Borough's Land Use Code	1. Ordinance 13-09-349 2. Planning Commission Recommendation 3. Additional Information from the Chair of the Planning Commission
Originator:		
Originating Department:		
Date Submitted:		
8/8/13		

Full Title/Motion:
Motion: Introduce Ordinance 13-09-349 and schedule a first public hearing for 10/8/13.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
------------------------	--

Summary Statement:

At the 7/11/13 Planning Commission meeting, Mark Sogge appealed the enforcement order requiring the payment of a \$250 after-the-fact fee for operating a lodging rental business without a conditional use permit. The Planning Commission believes this appeal pointed to a deficiency in the code, and the assembly was asked to waive the fee. The assembly chose to do that. At its August meeting, the Planning Commission decided to define "vacation rental" and provide for its use in the code, along with refining the current definition of "lodge".

This ordinance defines "vacation rental" and change the definition of "lodge"; and adds vacation rental to the Townsite zoning chart, the Mud Bay Planning/Zoning District, and the Lutak Inlet Planning/Zoning District.

Referral:

Sent to:	Date:
Recommendation:	Meeting Date:
Refer to:	

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 9/24/13	Tabled to Date:

AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE SECTION 18.20.020 TO DEFINE "VACATION RENTAL" AND CHANGE THE DEFINITION OF "LODGE"; AND AMENDING BOROUGH CODE SECTIONS 18.70.030(B)(3)(e), 18.70.030(C)(3)(e), AND 18.70.040 TO ADD VACATION RENTALS TO THE TOWNSITE ZONING CHART, THE MUD BAY PLANNING/ZONING DISTRICT, AND THE LUTAK INLET PLANNING/ZONING DISTRICT.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and if adopted with or without amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 18.20.020. Section 18.20.020 of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS
STRIKETHROUGH ITEMS ARE DELETED

18.20.020 Definitions – Regulatory.

"Lodge" means a ~~short-term~~ **vacation** rental accommodation with furnished quarters- **that provides, or is associated with, services such as meals and/or guiding, and accommodates one or more guests at a time.**

"Vacation Rental" means a privately-owned residential dwelling, such as, but not limited to, a single family residence, apartment, or room, that is rented for periods of 30 consecutive days or less, limited to a single guest or family at a time.

Section 5. Amendment of Section 18.70.030(B)(3)(e). Section 18.70.030(B)(3)(e) of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS

18.70.030 Zoning districts – Zones.

The borough is hereby divided into the following zoning districts and zones. These districts and zones are depicted on the official borough zoning map.

...

B. Mud Bay Planning/Zoning District.

...

3. Rural Residential Zone (MBRR).

...

e. Conditional Uses. Conditional uses in the rural residential zone are:

- (1) Public parks, public recreation sites, and nonprofit camps;
- (2) Schools;
- (3) Fire stations;
- (4) Lodges;
- (5) Commercial or public radio and television transmitters and towers;
- (6) Public utility facilities;
- (7) Commercial Enterprise. "Commercial enterprise" means any commercial,

manufacturing, sale or service that occurs on a person's private property. A commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the

property and with up to six additional employees at any one time. Terms of a conditional use permit for commercial enterprise shall eliminate or mitigate adverse effects to air quality, noise, traffic, parking, waste and sewage, signs, lighting and burdens on any community utilities and resources that may result from such commercial enterprise;

(8) Cemetery.

(9) Vacation Rentals.

...

Section 6. Amendment of Section 18.70.030(C)(3)(e). Section 18.70.030(C)(3)(e) of the Haines Borough Code is hereby amended to read as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS

18.70.030 Zoning districts – Zones.

The borough is hereby divided into the following zoning districts and zones. These districts and zones are depicted on the official borough zoning map.

...

C. Lutak Inlet Planning/Zoning District.

...

3. Rural Residential Zone.

...

e. Conditional Uses. Conditional uses in the rural residential zone are:

(1) Churches;

(2) Schools;

(3) Lodging houses;

(4) Public parks and recreation sites;

(5) Public utility facilities;

(6) Fire stations;

(7) Community halls;

(8) Governmental buildings;

(9) Rentals, sales, and professional services;

(10) Fish hatchery;

(11) Commercial agriculture;

(12) Commercial logging;

(13) Campgrounds; provided, that:

(a) A 50-foot greenbelt separates the campsites from any public road right-of-way and a 20-foot greenbelt separates the campsites from any perimeter property lines; and

(b) The campground is at least one-half mile from existing houses or land subdivided for residential purposes at the time of the application for a conditional use permit; and

(c) The campground provides facilities for solid waste disposal (e.g., bear-proof dumpsters); and

(d) Complies with all Department of Environmental Conservation sanitation requirements contained in 18 AAC 30; and

(e) The campground has a maximum average density of six individual campsites per commercially developed acre, a minimum distance from center to center of adjacent sites of 75 feet and a maximum of 60 sites overall;

(14) Cemetery.

(15) Vacation Rentals.

...

Section 7. Amendment of Section 18.70.040. Section 18.70.040 of the Haines Borough Code is hereby amended to add a new line for vacation rentals to read as follows. (The rest of the Zoning Use Chart remains unchanged.)

NOTE: **Bolded/UNDERLINED** ITEMS ARE ADDITIONS

18.70.040 Zoning use chart.

The following chart summarizes the uses allowed and the standards of review for each use, townsite planning/zoning district and the zones therein. In the commercial and industrial zones, more than one building housing a permissible principal use may be developed on a single lot; provided, that each building and use shall comply with all applicable requirements of this title. Additional requirements may be applicable to developments within some zones. See the definitions in Chapter [18.20](#) HBC for descriptions of each use.

...

ZONING USE CHART												
TOWNSITE PLANNING/ZONING DISTRICT												
UBR = Use-By-Right CU = Conditional Use												
NA = Not Allowed GFA = Gross Floor Area												
 = Permit Required			 = Permit Not Required									
Under General Classification, uses in UPPER CASE are primary and uses in lower case are secondary.												
GENERAL CLASSIFICATION →	INDUSTRIAL USES			COMMERCIAL/ Residential Uses			RESIDENTIAL USES ONLY	RESIDENTIAL/ Commercial Uses				RECREATIONAL USE
Specific Zoning Districts → USES ↓	Heavy Industrial	Light Industrial/ Commercial	Water front Industrial	Commercial	Water front	Significant Structures Area	Single Residential	Multiple Residential	Rural Residential	Rural Mixed Use	Multiple Use	Recreational
	I/H	I/L/C	I/W	C	W	SSA	SR	MR	RR	RMU	MU	REC
<u>Vacation Rental</u>	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>CU</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>NA</u>

Haines Borough
Ordinance No. 13-09-349
Page 4 of 4

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS
____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 09/24/13
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___

Haines Borough
**BOROUGH ASSEMBLY
ACTION REQUEST**

DATE: August 8, 2013

TO: Borough Assembly

FROM: Haines Borough Planning Commission

PLANNING COMMISSION ACTION: W/S Heinmiller moved to “recommend the Assembly adopt the proposed draft ordinance amending Section 18.20.020 to add definition of vacation rental and change definition of lodge; amending Section 18.70.040 & 18.70.030(B) & 18.70.030(C) to add vacation rental to the zoning chart, Mud Bay Planning/Zoning District and Lutak Inlet Planning/Zoning District.” This motion carried unanimously.

RATIONALE: At the July 11, 2013 Planning Commission meeting, Mark Sogge appealed the enforcement order requiring the payment of \$250 after-the-fact fees for operating a lodging rental business without a conditional use permit. The Planning Commission believes this appeal pointed to a deficiency in the code. They decide to define “vacation rental” and provide for its use in the code, and refine the current definition of “lodge”.

PLANNING COMMISSION REQUEST: for the Borough Assembly to amend HBC 18.20.020 & 18.70.040 & 18.70.030(B) & 18.70.030(C) to read:

18.20.020 Definitions - Regulatory.

“Lodge” means a short-term vacation rental accommodation with furnished quarters- that provides or is associated with services such as meals and/or guiding, and accommodates one or more guests at a time.

“Vacation Rental” means a privately owned residential dwelling, such as, but not limited to, a single family residence, apartment, or room, that is rented for periods of 30 consecutive days or less, limited to a single guest or family at a time.

18.70.040 Zoning use chart

ZONING USE CHART

TOWNSITE PLANNING/ZONING DISTRICT

UBR = Use-By-Right CU = Conditional Use

NA = Not Allowed GFA = Gross Floor Area

 = Permit Required

 = Permit Not Required

Under General Classification, uses in UPPER CASE are primary and uses in lower case are secondary.

GENERAL CLASSIFICATION →	INDUSTRIAL USES			COMMERCIAL/ Residential Uses			RESIDENTIAL USES ONLY	RESIDENTIAL/ Commercial Uses				RECREATIONAL USE
Specific Zoning Districts →	Heavy Industrial	Light Industrial/ Commercial	Waterfront Industrial	Commercial	Waterfront	Significant Structures Area	Single Residential	Multiple Residential	Rural Residential	Rural Mixed Use	Multiple Use	Recreational
USES ↓	I/H	I/L/C	I/W	C	W	SSA	SR	MR	RR	RMU	MU	REC
Vacation Rental	<u>NA</u>	<u>NA</u>	<u>NA</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>CU</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>UBR</u>	<u>NA</u>

18.70.030 Zoning districts - Zones

B. Mud Bay Planning/Zoning District

3. Rural Residential Zone (MBRR)

e. Conditional Uses. Conditional uses in the rural residential zone are:

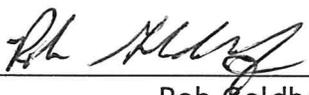
- (1) Public parks, public recreation sites, and nonprofit camps;
- (2) Schools;
- (3) Fire stations;
- (4) Lodges;
- (5) Commercial or public radio and television transmitters and towers;
- (6) Public utility facilities;
- (7) Commercial Enterprise. "Commercial enterprise" means any commercial, manufacturing, sale or service that occurs on a person's private property. A commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the property and with up to six additional employees at any one time. Terms of a conditional use permit for commercial enterprise shall eliminate or mitigate adverse effects to air quality, noise, traffic, parking, waste and sewage, signs, lighting and burdens on any community utilities and resources that may result from such commercial enterprise;
- (8) Cemetery-;
- (9) Vacation Rental.**

C. Lutak Inlet Planning/Zoning District

3. Rural Residential Zone.

e. Conditional Uses. Conditional uses in the rural residential zone are:

- (1) Churches;
- (2) Schools;
- (3) Lodging houses;
- (4) Public parks and recreation sites;
- (5) Public utility facilities;
- (6) Fire stations;
- (7) Community halls;
- (8) Governmental buildings;
- (9) Rentals, sales, and professional services;
- (10) Fish hatchery;
- (11) Commercial agriculture;
- (12) Commercial logging;
- (13) Campgrounds; provided, that:
 - (a) A 50-foot greenbelt separates the campsites from any public road right-of-way and a 20-foot greenbelt separates the campsites from any perimeter property lines; and
 - (b) The campground is at least one-half mile from existing houses or land subdivided for residential purposes at the time of the application for a conditional use permit; and
 - (c) The campground provides facilities for solid waste disposal (e.g., bear-proof dumpsters); and
 - (d) Complies with all Department of Environmental Conservation sanitation requirements contained in 18 AAC 30; and
 - (e) The campground has a maximum average density of six individual campsites per commercially developed acre, a minimum distance from center to center of adjacent sites of 75 feet and a maximum of 60 sites overall;
- (14) Cemetery-;
- (15) Vacation Rental.**

SUBMITTED BY  (signature)

Rob Goldberg
Planning Commission Chairman

From: Rob Goldberg [mailto:artstudioalaska@yahoo.com]
Sent: Tuesday, September 17, 2013 11:09 PM
To: Julie Cozzi
Subject: Re: Vacation Rentals...

Hi Julie,

Here is an explanation for the vacation rental ordinance:

To : Haines Borough Assembly
From: Haines Borough Planning Commission

Re: Ordinance No. 13-09-349

The conditional use permit for the Sogge's short term rental of their unoccupied home, formerly the residence of Irvin and Nancy Sogge, pointed up a deficiency in the Code. There is no definition for what they are doing with the house, which is renting it on a short term basis as a vacation rental. The home is a single family residence on its own lot. The use continues to be single residential, but the residents change every week or so.

This is not a B&B, which the Code defines as: an owner-occupied residential dwelling with up to three guest rooms, and includes residential uses offering overnight accommodations to registered transient guests. The Sogge's house is not owner-occupied. Nor do they provide breakfast or any other services.

The Code definition this fell into was "lodge", which the Code defines as: a short-term rental accommodation with furnished quarters. The Planning Commission feels that this definition is overly broad. A Hilton hotel could be defined in our Code as a "lodge".

This proposed ordinance makes the definition of "lodge" more specific and also adds a definition for "vacation rental". It also adds "vacation rental" to the Townsite Zoning Chart and the Mud Bay and Lutak portions of the Code.

Vacation rentals enhance Haines' economy by bringing independent travelers here. The Sogges are finding that some of their guests weren't planning to come to Haines on their Alaskan trip, but they changed their minds after seeing photos of the views from their home posted on their website. The Comprehensive Plan supports this in Chapter 5, Objective 3D: Capitalize on Haines' existing reputation and brand as a recreation destination, and Objective 3F: Strengthen entrepreneurial activity and businesses.

Vacation rentals, especially when the home is in a secluded spot, have no more impact than a single family residence. With more and more people planning their vacations on the Internet, Haines has the potential for attracting more independent travelers. The Planning Commission thinks that vacation rentals can become a growing part of our economy.

Rob Goldberg
Haines Borough Planning Commission Chair



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-353

Assembly Meeting Date: 9/24/13

Business Item Description:		Attachments:
Subject: Ocean Beauty Seafoods Utility Easements on Borough-Selected Land in Excursion Inlet		1. Ordinance 13-09-350 2. Memo to the Assembly from Atty Thomas Meacham 3. Proposed Easement Lease 4. Records of Surveying 5. Planning Commission Recommendation 6. Memo to the Planning Commission from Atty Thomas Meacham
Originator: Borough Manager		
Originating Department: Administration		
Date Submitted: 9/16/13		

Full Title/Motion:
Motion: Introduce Ordinance 13-09-350 and schedule a first public hearing for 10/8/13.

Administrative Recommendation:

Fiscal Impact:		
Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:
Comp Plan Policy Nos.: _____ Consistent: Yes No

Summary Statement:
On 9/12/13, the Planning Commission considered a proposed Record of Survey and a proposed Easement Grant (Utility Line Easements). These involve existing improvements on the Excursion Inlet land the Borough expects to eventually receive by patent from the state through the Municipal Land Selection Act process. It's up to the Haines Borough, as successor in title to the state, to negotiate an easement lease with Ocean's Beauty. Ocean Beauty's lease from the Borough would not be treated as a "new" easement lease for new utilities to be constructed in the future. Instead, the proposed lease recognizes Ocean Beauty's position, as existing occupant, to its claim or "valid existing rights" to easement for utilities constructed by it and that have long been in place, even before the Borough applied for ownership of this land. The Planning Commission recommends this.

Referral:
Sent to: _____ Date: _____
Recommendation: _____ Refer to: _____ Meeting Date: _____

Assembly Action:
Workshop Date(s): _____ Public Hearing Date(s): _____
Meeting Date(s): 9/24/13 Tabled to Date: _____

AN ORDINANCE OF THE HAINES BOROUGH PURSUANT TO HAINES BOROUGH CODE TITLE 14 SECTION 14.16.160, APPROVING A RECORD OF SURVEY AND AUTHORIZING THE EXECUTION OF AN EASEMENT GRANT TO OCEAN BEAUTY SEAFOODS LLC FOR EXISTING UTILITIES WITHIN ALASKA STATE LAND SURVEY 95-35 AT EXCURSION INLET.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a special nature under the noncode provisions of Borough Code 14.16.160, and therefore the adopted ordinance shall not become a permanent part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall become effective immediately upon adoption.

Section 4. The Record of Survey pertaining to the location of existing utility lines, and the proposed easements to accommodate those utility lines, on land presently managed by the Haines Borough, and which will in the future be patented to the Borough by the State of Alaska as Alaska State Land Survey (ASLS) 95-35 (Excursion Inlet), is hereby approved.

Section 5. The form and content of the proposed Easement Grant (Utility Line Easements) are hereby approved under the noncode provisions of Haines Borough Code 14.16.160.

Section 6. The Haines Borough Manager is hereby authorized to execute the approved Easement Grant (Utility Line Easements) with Ocean Beauty Seafoods, LLC.

Section 7. After the Haines Borough receives and records its patent from the State of Alaska that conveys SLS 95-35 to the Borough, the Borough Manager is authorized to issue the Borough's Quitclaim of Easements to Ocean Beauty Seafoods LLC, for the purpose of confirming the earlier execution of the Borough's Easement Grant (Utility Line Easements) which is authorized by this ordinance.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2013.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 09/24/13
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___

THOMAS E. MEACHAM

ATTORNEY AT LAW

ALASKA BAR NO. 7111032
1971

TELEPHONE: 907/346-1077
FACSIMILE: 907/346-1028
tmeacham@gci.net

9500 PROSPECT DRIVE
ANCHORAGE, ALASKA
USA 99507-5924

September 18, 2013

MEMORANDUM

To: Haines Borough Assembly

Re: Ocean Beauty Seafoods utility easements on Borough-
selected land (Excursion Inlet, ASLS 95-35)

From: Thomas E. Meacham, Attorney at Law
Retained counsel, Haines Borough
Our File No. 150-1

On your agenda for review and proposed adoption, as recommended by the Haines Borough Planning Commission, are a proposed Record of Survey and a proposed Easement Grant (Utility Line Easements). These documents involve existing improvements presently on the state land at Excursion Inlet, to which the Borough expects to eventually receive patent from the State of Alaska, through the Municipal Land Selection Act process. A survey of this land has been completed (Alaska State Land Survey 95-35), and the Planning Commission approved this survey on March 14, 2012. ASLS 95-35 is expected to be approved by the State, and will then be recorded. Sometime after this recording, the State will issue its land patent to the Borough.

The Planning Commission's role in reviewing proposed Borough easement grants and making its recommendations to the Borough Assembly arises from Borough Code Section 14.16.190 C. The Planning Commission acted at its meeting on September 12, 2013, recommending to the Assembly that it approve the Record of Survey and the proposed Easement Grant by enacting an ordinance under the noncode "negotiated lease" provisions of Borough Code 14.16.160, authorizing the Borough Manager to execute the Easement Grant to Ocean Beauty Seafoods LLC.

The following information was presented to the Haines Borough Planning Commission in a Memorandum dated September 12, 2013, and is presented here to inform the Borough Assembly.

Background. The Borough has management authority over the Excursion Inlet tract, in anticipation of receiving title from the State to its approved selection. Ocean Beauty Seafoods LLC and its predecessor companies have constructed and maintained utility line improvements (water lines, sewer lines, and power lines) on this tract for

many years, dating even prior to statehood. Ocean Beauty, through its predecessor companies, had many years ago applied to the Alaska Division of Lands (ADL) for easements covering these utility lines, but Ocean Beauty had never perfected its application.

In 2012, the Alaska Department of Natural Resources (DNR) directed Ocean Beauty to submit an as-built survey of their utilities if they wanted to complete their ADL easement applications. Ocean Beauty hired Lounsbury and Associates to perform the survey, but during the DNR review process of the as-built survey, the State Attorney General's office advised DNR that the agency no longer had the ability to grant such easements, due a time limit of 25 years from the date of original application. This conclusion did not mean that Ocean Beauty's existing improvements disappeared, but instead that it would be up to the Haines Borough, as successor in title to the State, to conclude the longstanding easement application of Ocean Beauty involving its existing utility lines.

Lounsbury and Associates has prepared a proposed Record of Survey for Ocean Beauty that depicts the location and widths of the utility easements encompassing its existing utility lines, and for which Ocean Beauty has applied. A copy of that Record of Survey is in your packet.

Also in your packet is a proposed Easement Grant (Utility Line Easements) that has been negotiated in concept between Ocean Beauty and the undersigned, as retained counsel for the Borough. This proposed Easement Grant, together with the Record of Survey, have been recommended to you by the Planning Commission, and are presented here for the Borough Assembly's review and requested approval by ordinance. The request is for recognition and a grant of legal easements for Ocean Beauty's utility lines, as pre-existing improvements on land as to which the Borough presently has management authority, and to which the Borough will eventually receive patent from the State.

When the State issues its patent to ASLS 95-35 (which could be a number of months from now), it is intended that the Borough will issue a quitclaim to Ocean Beauty regarding the easements, simply confirming the actions the Borough had earlier taken with its management authority over the Excursion Inlet land, but before issuance of the state patent.

Recommendation. Because Ocean Beauty's utility improvements have been in place for many years, I am recommending that the proposed Easement Grant be approved by the Haines Borough Assembly, through adoption of a noncode ordinance under authority contained in the "negotiated lease" provision of Borough Code 14.16.160. The proposed Easement Grant (Utility Line Easements) is drafted with this approach in mind.

Under this approach, Ocean Beauty's lease from the Borough would not be treated as a "new" easement lease for new utilities to be constructed in the future. Instead, the proposed lease recognizes Ocean Beauty's position, as an existing occupant, to its claim of "valid existing rights" to easements for utilities constructed by it and which that have long been in place, even before the Borough applied for ownership of this land.

Thus, the present situation is quite similar to the mandatory provisions in state law that require recognition of the pre-statehood claims of "existing tidelands occupants," as legal preference right holders, any time the State proposes to transfer ownership of tidelands to a local government (Alaska Tidelands Act, AS 38.05.820-.825). These "occupants" did not have to show that they held any earlier, vested property right to the tideland (and in fact most did not); they needed only to show their occupancy and improvement of tidelands before a certain date specified in the statute, and their continued use.

Because the present circumstances of Ocean Beauty on the Excursion Inlet uplands appear to be substantially parallel to this category of longstanding, existing occupants of tidelands, the recommended easement grant to Ocean Beauty would require Ocean Beauty to pay the costs of survey (which Ocean Beauty has done), but it would not be assessing a "fair market value" easement fee or lease rental charge for the easement grant. (The Borough would ordinarily be required to assess an easement rental fee based on a percentage of the fair market value under Borough Code 14.16, if this were a "brand-new" utility easement request coming from a new proposed user of Borough land).

If the Borough Assembly takes the action recommended in this Memorandum, the Easement Grant to Ocean Beauty will be facilitated by adoption of a noncode ordinance under Borough Code 14.16.160, authorizing the Borough Manager to implement the Grant.

Easement Grant provisions. The proposed Easement Grant contains standard easement provisions intended to give both parties a level of legal certainty. Among the provisions are the following:

- a. incorporation of the Record of Survey that gives the precise location of the utility easements (Paragraphs 1 and 2);
- b. recognition of the existing location of Ocean Beauty's utility lines within those easements, and its right to repair or install new lines within these easements (Paragraph 3);

c. Ocean Beauty's sole responsibility for repair and maintenance of the subject utility lines (Paragraph 6);

d. the fact that the easements "run with the land," meaning that the easement grant has no fixed termination date, and that if either Ocean Beauty or the Borough transfers its interests in this land, the easements will continue to exist in accordance with the terms of the Easement Grant (Paragraph 7);

e. the setting of a period of five continuous years of non-use by Ocean Beauty of any particular easement segment, after which time the Borough could give notice to Ocean Beauty that it will terminate the unused segment of the easement, resulting in the extinguishment of that easement segment (Paragraph 9); and

f. Ocean Beauty's obligation to remove improvements and restore to an acceptable level any easement segment it voluntarily abandons, or that is extinguished by non-use (Paragraph 10).

Please contact me, through Mark Earnest, Borough Manager, if any member of the Borough Assembly wants further clarification regarding any of the issues discussed in this Memorandum.

EASEMENT GRANT
(UTILITY LINE EASEMENTS)

FOR AND IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) in hand paid, and other good and value consideration, HAINES BOROUGH, an Alaska Municipal Corporation, of P.O. Box 1209, Haines, Alaska 99827 (“Grantor”) hereby grants, bargains, sells, conveys unto OCEAN BEAUTY SEAFOODS LLC, an Alaska Limited Liability Company of P.O. Box 70739, Seattle, WA 98127 (“Grantee”) Utility Easements (“Easements”) as follows:

1. **Burdened Parcels:** The Easements cross that certain real property owned, or to be owned, by Grantor, and known as Tracts A, B1, B2, C, D, G, I, K and L, ASLS 95-35, according to Plat No. _____ filed in the Juneau Recording District, First Judicial District, State of Alaska (the “Burdened Parcels”).

2. **Easement Locations.** The Easements shall be located within the Burdened Parcels, and shall consist of the hatched areas shown on that certain “Record of Survey, Excursion Inlet Utility Easements” filed as Plat No. _____ in the Juneau Recording District, First Judicial District.

The sidelines at the exterior margins of the easements will be parallel with the surveyed centerline unless otherwise labeled with bearings and distances on said Record of Survey. The width from centerline to each sideline and the area of each Easement are shown on said Record of Survey.

The easements are identified as “E1” through “E28”, inclusive, on said Record of Survey. The easement(s) transversing each Burdened Parcel are identified as follows:

Tract A: E-1

Trace B1: E12

Tract B2: E10, E11

EASEMENT GRANT (UTILITY LINE EASEMENTS)

Tract C: E2

Tract D: E4

Tract G: E3, E5

Tract I: E6, E7, E8, E9

Tract K: E16, E17, E18, E23, E25, E26, E27, E28

Tract L: E8, E13, E14, E15, E19, E20, E21, E22, E24

3. **Easement Rights.** These Easements grant Grantee the right to retain the existing water lines, sewer lines, and power lines (the “Utility Lines”) within the Easements in their current locations. Grantee may install new utility lines within the Easements, provided that the new lines do not materially increase the Easement burden on the Burdened Parcels. Grantee is further granted a right of access across the Burdened Parcels for the purpose of maintaining, repairing, reconstructing, replacing and operating the Utility Lines.

4. **Easements Exclusive.** The Easements granted hereunder are exclusive to Grantee. Grantor shall have full use of the easement area to the extent such use does not unreasonably interfere with Grantee’s easement rights hereunder.

5. **Easements Appurtenant.** These Easements are appurtenant to and are granted for the benefit of the following real property (the “Benefited Parcels”):

Tr. 1 and Tr. 2, Alaska Tidelands Survey 97, Plat No. 376; U.S. Survey No. 227; Alaska State Land Survey No. 85-222, Plat No. 86-77; Tracts M and N, Alaska State Land Survey 95-35, Plat No. _____; a portion of Alaska Tideland Survey 862 as shown on Attachment A, Alaska State Land Use Permit #LAS 22470; all in the Juneau Recording District, First Judicial District, Alaska.

6. **Repair and Indemnity.** Grantee shall be solely responsible for the maintenance, operation, construction, reconstruction and repair of the Utility Lines. Grantee shall repair any damage to the Burdened Parcels caused by Grantee’s exercise of the rights granted hereunder. Grantee shall defend, indemnify, and save Grantor harmless from and against any loss, liability, or damage arising out of Grantee’s exercise of the rights granted hereunder.

EASEMENT GRANT (UTILITY LINE EASEMENTS)

7. **Easements Run With the Land.** The Easements granted hereunder shall run with the land, for the benefit of Grantee's successors and assigns with regard to the Benefited Parcels, and shall bind the Burdened Parcels with respect to Grantor's successors and assigns.

8. **After-Acquired Interest.** Grantor has selected the Burdened Parcels, and its selection has been approved by the State of Alaska under AS 29.65.010, *et. seq.* Grantor represents that it presently has management authority over the Burdened Parcels, and accordingly has authority to make this Easement Grant. In the event fee title has not been conveyed by the State of Alaska to Grantor by the date of execution of this Easement Grant, the Easement Grant shall attach to any fee or lesser interest subsequently acquired by Grantor from the State of Alaska.

9. **Non-Use and Reversion to Grantor.** If Grantee ceases all use of any of the Easement segments E1 through E28 for a period of five (5) consecutive years, Grantor may deem that segment unused and give written notice of at least thirty (30) days of Grantor's intent to terminate the Easement as to the unused segment. If Grantee does not resume use of the unused segment within thirty (30) days, or such longer period as may be stated in the notice, Grantor may by recorded instrument terminate the unused segment of the Easement. In the event of such a termination, all Grantee's rights hereunder shall expire as to such segment, and Grantor will own the affected Burdened Parcel free and clear of that segment of the Easement.

10. **Restoration Upon Non-Use or Relinquishment.** If Grantee voluntarily relinquishes any segment of Easements E1 through E28, and/or if any segment of Easements E1 through E28 reverts to Grantor pursuant to Paragraph 9 above, then Grantee shall be obligated to promptly remove from such segment all above-ground improvements and equipment, and to render any buried improvements and equipment stable, inert, and in compliance with all applicable environmental, health and safety laws and regulations. Upon the reversion for non-use or the relinquishment of any Easement segment, Grantee shall also be obligated to restore the affected land it to a condition that is reasonably satisfactory to Grantor, or at the Grantor's option, to pay the cost of such removal, and restoration. The Grantor's satisfaction shall be stated in writing.

11. **Severability.** Should any Easement or any part thereof granted under this instrument be invalid for any reason, the remaining Easements shall nevertheless remain in effect.

GRANTOR:

**HAINES BOROUGH,
an Alaska Municipal Corporation**

Dated: _____

By _____

Its: _____

GRANTEE:

**OCEAN BEAUTY SEAFOODS LLC,
a limited liability company**

Dated: _____

By _____

Its: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, the _____ of HAINES BOROUGH, an Alaska Municipal Corporation, on behalf of the corporation.

Notary Public in and for State of Alaska
My Commission Expires: _____

AREA BY EASEMENT

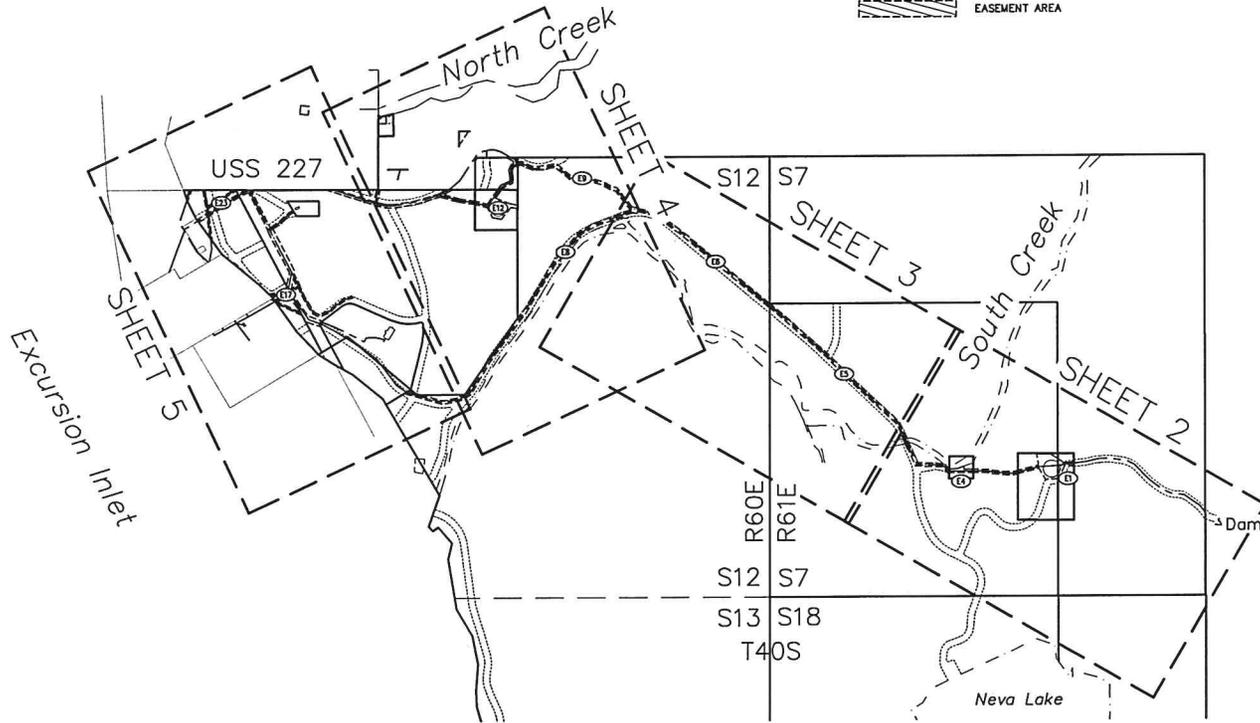
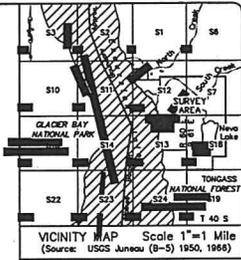
EASEMENT	TRACT	SQ.FT.	ACRES
E1	A	9,379	0.215
E2	C	42,065	0.966
E3	G	12,061	0.277
E4	D	7,964	0.181
E5	G	68,656	1.576
E6	I	44,163	1.014
E7	I	3,200	0.073
E8	I	82,544	1.895
E9	L	2,891	0.066
E9	I	35,240	0.809
E10	B2	11,950	0.274
E11	B2	364	0.008
E12	B1	35,699	0.820
E13	L	45,580	1.041
E14	L	13,494	0.310
E15	L	14,772	0.339
E16	K	7,348	0.169
E17	K	5,225	0.120
E18	K	2,379	0.055
E19	L	5,536	0.127
E20	L	40,290	0.925
E21	L	5,182	0.119
E22	L	2,708	0.062
E23	K	26,879	0.617
E24	L	28	0.001
E25	K	1,847	0.042
E26	K	925	0.021
E27	K	3,244	0.074
E28	K	425	0.010

AREA BY TRACT

TRACT	TOTAL SQ. FT.	TOTAL ACRES
A	9,379	0.215
B1	35,699	0.820
B2	12,317	0.283
C	42,065	0.966
D	7,904	0.181
G	80,717	1.853
I	164,943	3.787
K	48,271	1.108
L	130,479	2.997

LEGEND

- RECORD MONUMENT PER ASLS 95-35
- RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- ⊘ RECORD MONUMENT PER ASLS 95-35
- ⊙ TYPICAL EASEMENT IDENTIFIER
- TYPICAL ASLS TRACT CORNER DESIGNATION
- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
- EDGE OF WATER
- EASEMENT CENTERLINE
- EASEMENT SIDELINE
- TRACT BOUNDARY
- EASEMENT AREA



THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY AS 40.15.190(2).

RECORD OF SURVEY
 ASLS 95-35
 EXCURSION INLET
 UTILITY EASEMENTS
 LOCATED WITHIN
 TRACTS A, B1, B2, C, D, G, K, L & M
 ASLS 95-35, SECTION 7, T. 40 S., R. 61 E., C.R.M.
 JUNEAU RECORDING DISTRICT, ALASKA

PROJECT LOCATION:
 EXCURSION INLET
 ALASKA

DATE: **MAY 6, 2013**
 SHEET: **1 OF 8**
 FIELD BOOK: **08-058 & 12-036**
 DRAWING NAME: **12-036 ROADLOG**
 DRAWN: **ASH**
 CHECKED: **TLM**
 GRID: **N/A**
 SCALE: **1" = 500'**

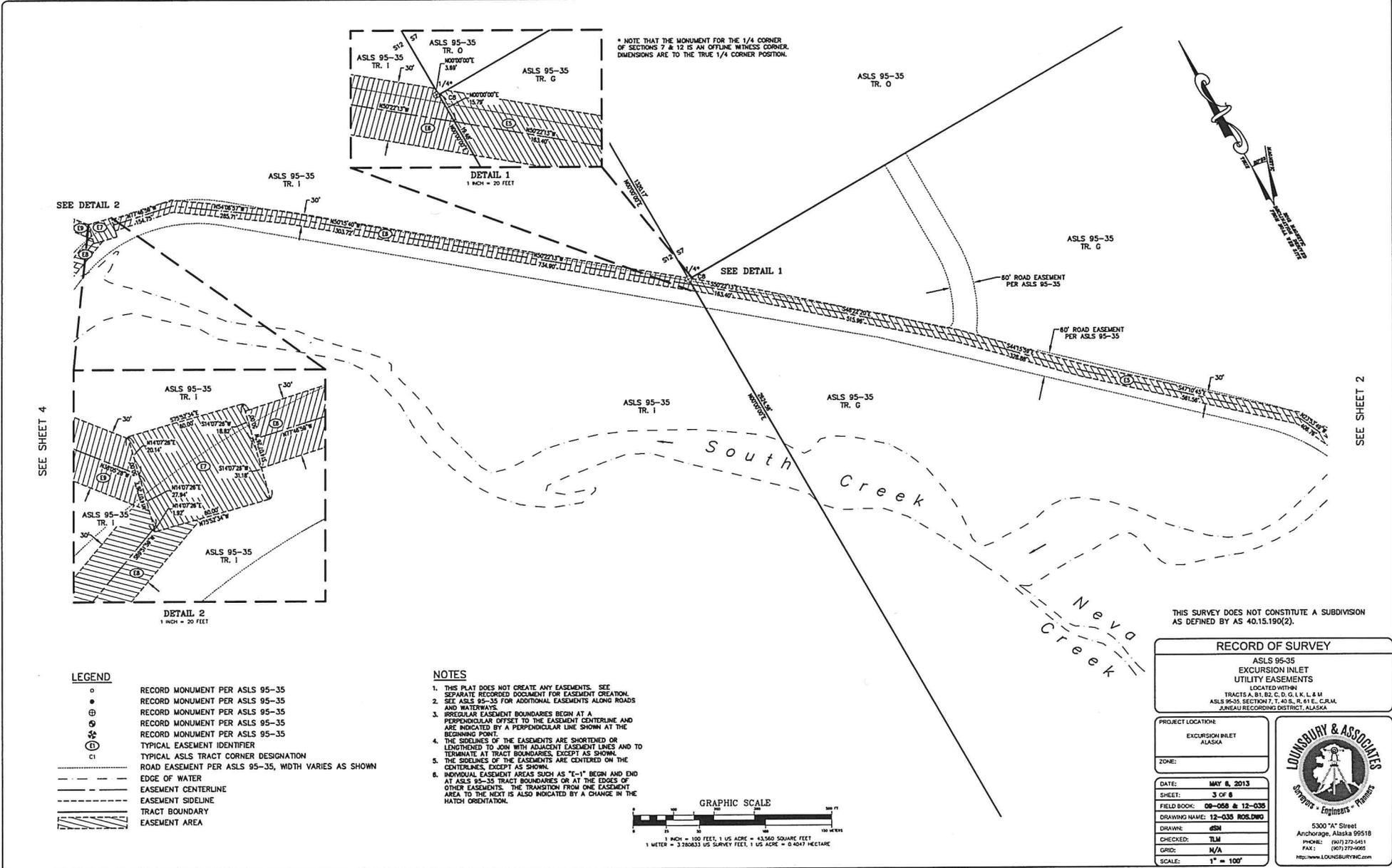
LOUNSBURY & ASSOCIATES
 Surveyors - Engineers - Planners

5300 "A" Street
 Anchorage, Alaska 99518
 PHONE: (907) 272-9451
 FAX: (907) 272-9055
 http://www.LOUNSBURYINC.com

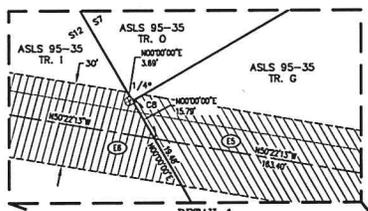


NOTES

- THIS PLAT DOES NOT CREATE ANY EASEMENTS. SEE SEPARATE RECORDED DOCUMENT FOR EASEMENT CREATION.
- SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
- IRREGULAR EASEMENT BOUNDARIES BEGIN AT A PERPENDICULAR OFFSET TO THE EASEMENT CENTERLINE AND ARE INDICATED BY A PERPENDICULAR LINE SHOWN AT THE BEGINNING POINT.
- THE SIDELINES OF THE EASEMENTS ARE SHORTENED OR LENGTHENED TO JOIN WITH ADJACENT EASEMENT LINES AND TO TERMINATE AT TRACT BOUNDARIES, EXCEPT AS SHOWN.
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- INDIVIDUAL EASEMENT AREAS SUCH AS "E-1" BEGIN AND END AT ASLS 95-35 TRACT BOUNDARIES OR AT THE EDGES OF OTHER EASEMENTS. THE TRANSITION FROM ONE EASEMENT AREA TO THE NEXT IS ALSO INDICATED BY A CHANGE IN THE HATCH ORIENTATION.

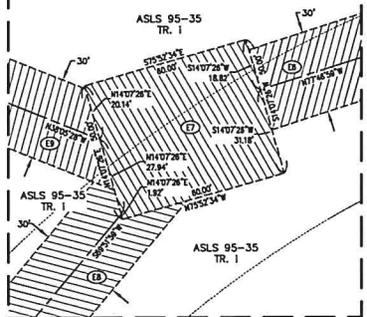


* NOTE THAT THE MONUMENT FOR THE 1/4 CORNER OF SECTIONS 7 & 12 IS AN OFFLINE WITNESS CORNER. DIMENSIONS ARE TO THE TRUE 1/4 CORNER POSITION.



SEE DETAIL 2

SEE DETAIL 1



DETAIL 2
1 inch = 20 FEET

SEE SHEET 4

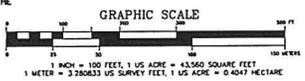
SEE SHEET 2

LEGEND

- RECORD MONUMENT PER ASLS 95-35
- RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- ⊘ RECORD MONUMENT PER ASLS 95-35
- ⊙ TYPICAL EASEMENT IDENTIFIER
- C1 TYPICAL ASLS TRACT CORNER DESIGNATION
- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
- EDGE OF WATER
- EASEMENT CENTERLINE
- EASEMENT SIDELINE
- TRACT BOUNDARY
- EASEMENT AREA

NOTES

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2. SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
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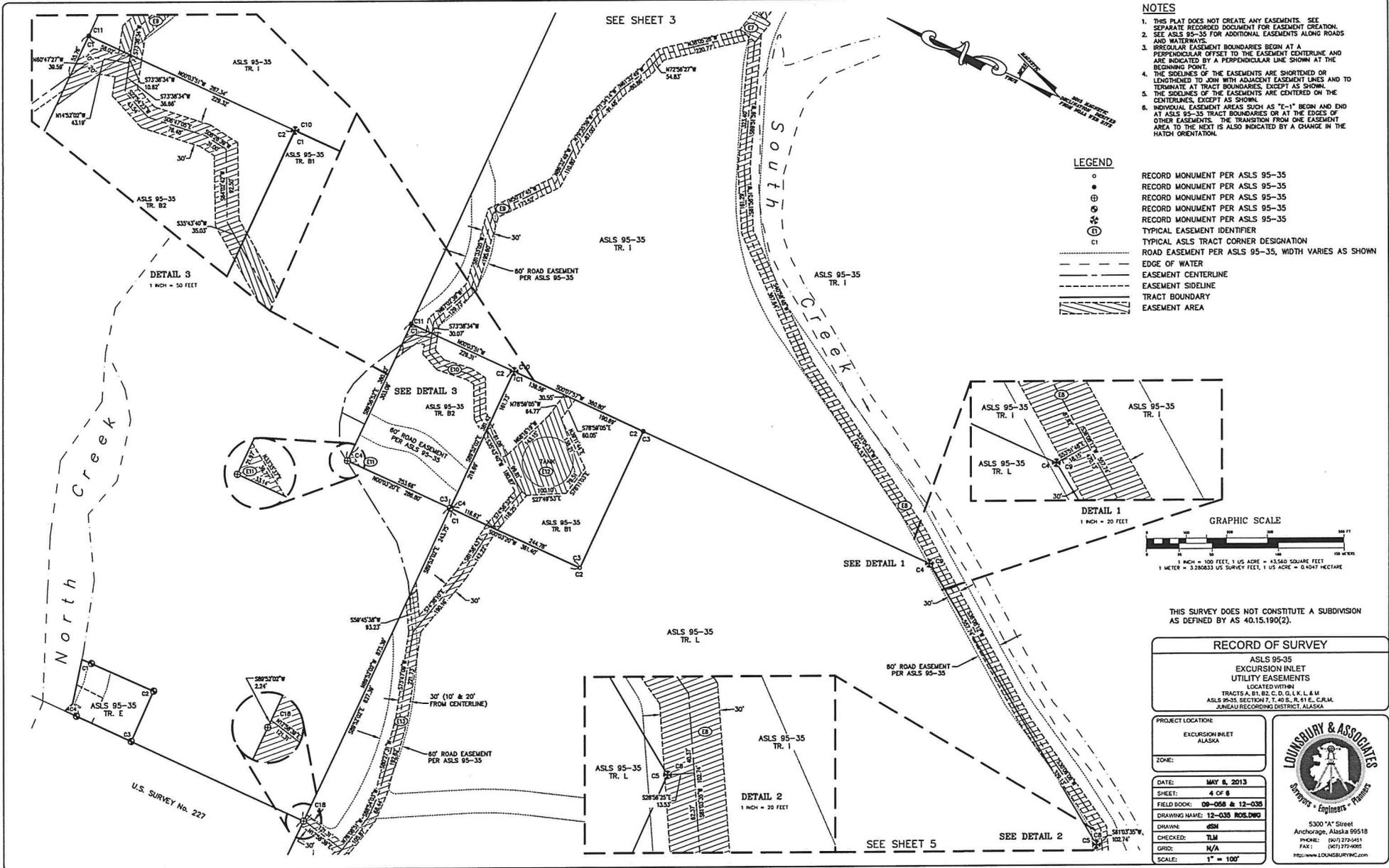
RECORD OF SURVEY	
ASLS 95-35	
EXCURSION INLET	
UTILITY EASEMENTS	
LOCATED WITHIN	
TRACTS A, B1, B2, C, D, G, L, K, L, E, M	
ASLS 95-35 SECTION 7, T. 40 S., R. 61 E., C. 14M,	
JUNEAU RECORDING DISTRICT, ALASKA	

PROJECT LOCATION:	EXCURSION INLET ALASKA
ZONE:	

DATE:	MAY 6, 2013
SHEET:	3 OF 8
FIELD BOOK:	09-058 & 12-035
DRAWING NAME:	12-035 ROD.DWG
DRAWN:	ASN
CHECKED:	TLM
GRID:	N/A
SCALE:	1" = 100'

LOUNSBURY & ASSOCIATES
Surveyors • Engineers • Planners

5300 "A" Street
Anchorage, Alaska 99518
PHONE: (907) 275-0441
FAX: (907) 275-6085
http://www.LOUNSBURYINC.com

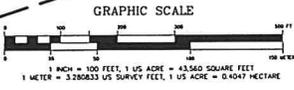


NOTES

1. THIS PLAT DOES NOT CREATE ANY EASEMENTS. SEE SEPARATE RECORDED DOCUMENT FOR EASEMENT CREATION.
2. SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
3. IRREGULAR EASEMENT BOUNDARIES BEGIN AT A PERPENDICULAR OFFSET TO THE EASEMENT CENTERLINE AND ARE INDICATED BY A PERPENDICULAR LINE SHOWN AT THE BEGINNING POINT.
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LEGEND

- RECORD MONUMENT PER ASLS 95-35
- RECORD MONUMENT PER ASLS 95-35
- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
- Ⓢ TYPICAL EASEMENT IDENTIFIER
- Ⓣ TYPICAL ASLS TRACT CORNER DESIGNATION
- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
- EDGE OF WATER
- EASEMENT CENTERLINE
- EASEMENT SIDELINE
- TRACT BOUNDARY
- EASEMENT AREA



THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY AS 40.15.190(2).

RECORD OF SURVEY	
ASLS 95-35 EXCURSION INLET UTILITY EASEMENTS LOCATED WITHIN TRACTS A, B1, B2, C, D, G, L, K, L & M ASLS 95-35, SECTION 7, T. 40 S., R. 61 E., C. 14M, JUNEAU RECORDING DISTRICT, ALASKA	
PROJECT LOCATION: EXCURSION INLET ALASKA	
DATE: MAY 8, 2013	
SHEET: 4 OF 8	5300 "A" Street Anchorage, Alaska 99518 PHONE: (907) 273-9441 FAX: (907) 277-9095 http://www.LOUNSBURYINC.com
FIELD BOOK: 09-058 & 12-035	
DRAWING NAME: 12-035 ROAD.DWG	
DRAWN: JSM	
CHECKED: TLM	
GRID: N/A	
SCALE: 1" = 100'	

U.S. SURVEY No. 227

SEE SHEET 3

SEE SHEET 5

SEE DETAIL 2

SEE DETAIL 3

SEE DETAIL 1

DETAIL 2
1 inch = 20 feet

DETAIL 1
1 inch = 20 feet

DETAIL 3
1 inch = 50 feet

NOTES

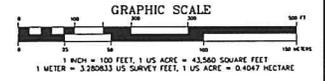
1. THIS PLAT DOES NOT CREATE ANY EASEMENTS. SEE SEPARATE RECORDED DOCUMENT FOR EASEMENT CREATION.
2. SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
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SEE SHEET 4

DETAIL SHEET 6

LEGEND

- RECORD MONUMENT PER ASLS 95-35
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- ⊙ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- ⊘ TYPICAL EASEMENT IDENTIFIER
- ⊙ TYPICAL ASLS TRACT CORNER DESIGNATION
- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
- EDGE OF WATER
- EASEMENT CENTERLINE
- EASEMENT SIDELINE
- TRACT BOUNDARY
- EASEMENT AREA



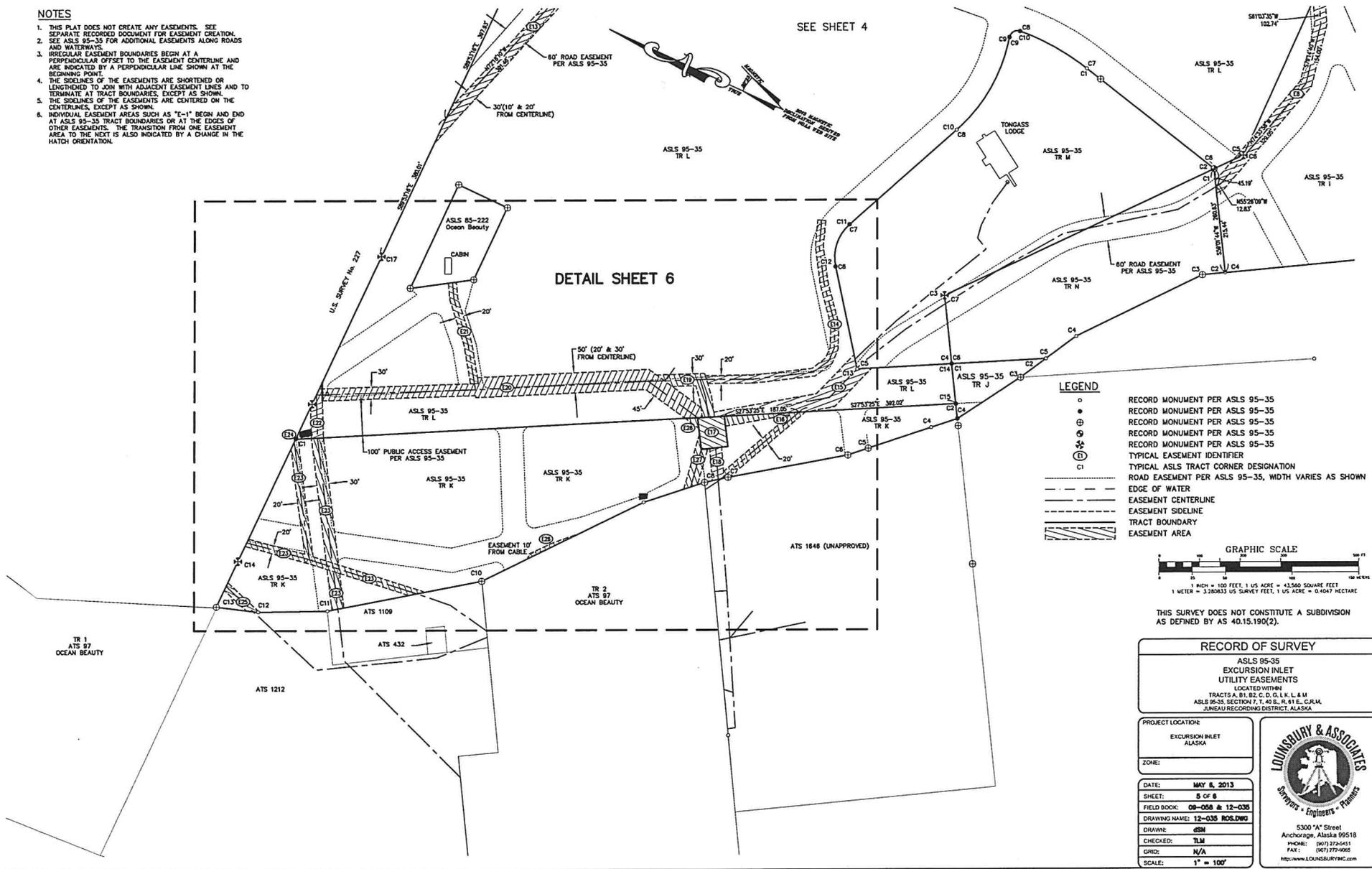
THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY AS 40.15.190(2).

RECORD OF SURVEY

ASLS 95-35
 EXCURSION INLET
 UTILITY EASEMENTS
 LOCATED WITHIN
 TRACTS A, B1, B2, C, D, G, L, K, L & M
 ASLS 95-35, SECTION 7, T. 40 S., R. 61 E., C.R.M.
 JUNEAU RECORDING DISTRICT, ALASKA

PROJECT LOCATION: EXCURSION INLET ALASKA
ZONE:
DATE: MAY 6, 2013
SHEET: 5 OF 6
FIELD BOOK: 08-056 & 12-035
DRAWING NAME: 12-035 ROS.DWG
DRAWN: GSN
CHECKED: TLM
GRID: N/A
SCALE: 1" = 100'

LOUNSBURY & ASSOCIATES
 Surveyors - Engineers - Planners
 5300 "A" Street
 Anchorage, Alaska 99518
 PHONE: (907) 277-6445
 FAX: (907) 277-0065
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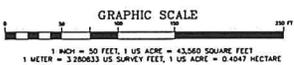
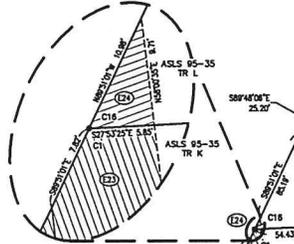
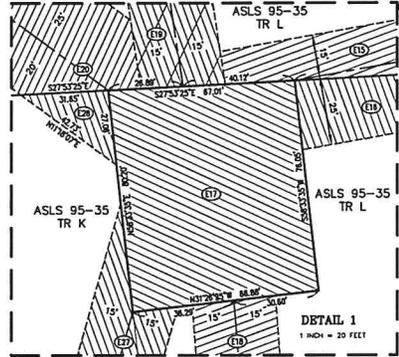
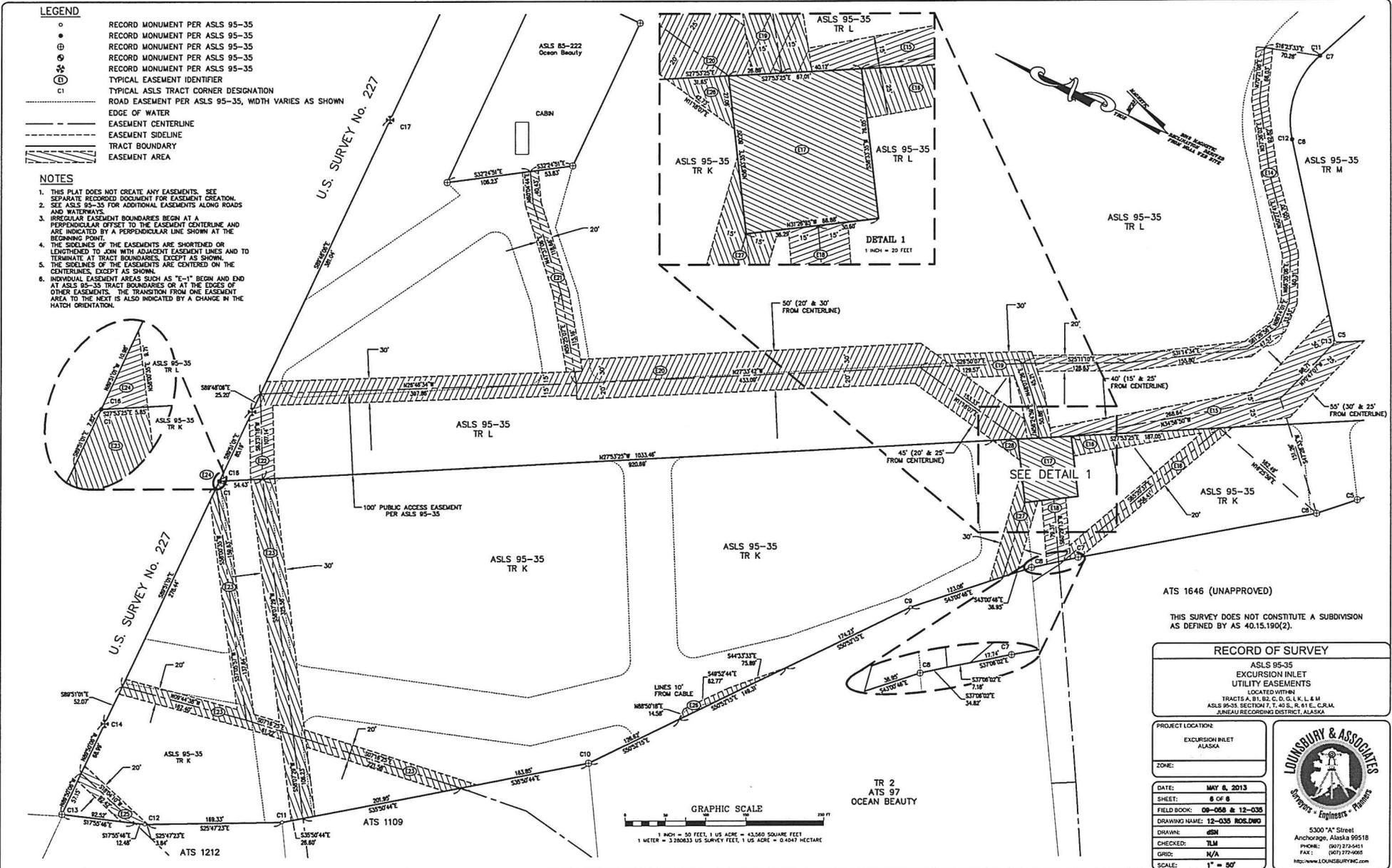


LEGEND

- RECORD MONUMENT PER ASLS 95-35
- RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- Ⓢ TYPICAL EASEMENT IDENTIFIER
- C1 TYPICAL ASLS TRACT CORNER DESIGNATION
- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
- - - - - EDGE OF WATER
- - - - - EASEMENT CENTERLINE
- - - - - EASEMENT SIDELINE
- - - - - TRACT BOUNDARY
- ▨ EASEMENT AREA

NOTES

1. THIS PLAT DOES NOT CREATE ANY EASEMENTS. SEE SEPARATE RECORDED DOCUMENT FOR EASEMENT CREATION.
2. SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
3. IRREGULAR EASEMENT BOUNDARIES BEGIN AT A PERPENDICULAR OFFSET TO THE EASEMENT CENTERLINE AND ARE INDICATED BY A PERPENDICULAR LINE SHOWN AT THE BEGINNING POINT.
4. THE SIDELINES OF THE EASEMENTS ARE SHORTENED OR LENGTHENED TO JOIN WITH ADJACENT EASEMENT LINES AND TO TERMINATE AT TRACT BOUNDARIES, EXCEPT AS SHOWN.
5. THE SIDELINES OF THE EASEMENTS ARE CENTERED ON THE CENTERLINES, EXCEPT AS SHOWN.
6. INDIVIDUAL EASEMENT AREAS SUCH AS "E-1" BEGIN AND END AT ASLS 95-35 TRACT BOUNDARIES OR AT THE EDGES OF OTHER EASEMENTS. THE TRANSITION FROM ONE EASEMENT AREA TO THE NEXT IS ALSO INDICATED BY A CHANGE IN THE MATCH ORIENTATION.



ATS 1646 (UNAPPROVED)
 THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY AS 40.15.190(2).

RECORD OF SURVEY
 ASLS 95-35
 EXCURSION INLET
 UTILITY EASEMENTS
 LOCATED WITHIN
 TRACTS A, B1, B2, C, D, G, K, L, & M
 ASLS 95-35 SECTION 7, T.40 S., R. 81 E., C.R. 14
 JUNEAU RECORDING DISTRICT, ALASKA

PROJECT LOCATION:
 EXCURSION INLET
 ALASKA
 ZONE:
 DATE: MAY 6, 2013
 SHEET: 8 OF 8
 FIELD BOOK: 08-056 & 12-035
 DRAWING NAME: 12-035 NOS.D90
 DRAWN: JMM
 CHECKED: TLM
 GRID: N/A
 SCALE: 1" = 30'

LOUNSBURY & ASSOCIATES
 Surveyors • Engineers • Planners
 5300 "A" Street
 Anchorage, Alaska 99518
 PHONE: (907) 272-5451
 FAX: (907) 272-4008
 http://www.LOUNSBURYINC.com

TR 2
 ATS 97
 OCEAN BEAUTY



Haines Borough
PLANNING COMMISSION
RECORD OF DECISION

DATE: September 12, 2013

TO: Borough Assembly

FROM: The Haines Planning Commission

PLANNING COMMISSION DECISION:

Motion: Turner moved to “recommend for the Assembly to grant utility easements to Ocean Beauty at Excursion Inlet.” The motion passed unanimously.

RATIONALE: This issue has been ongoing for decades and is now being resolved. The Planning Commission has reviewed the proposed Borough easement grants and the draft record of survey.

SUBMITTED BY _____ (signature)

A handwritten signature in black ink, appearing to read "Rob Goldberg", is written over a horizontal line.

Rob Goldberg
Planning Commission Chair

THOMAS E. MEACHAM
ATTORNEY AT LAW

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ANCHORAGE, ALASKA
USA 99507-5924

ALASKA BAR NO. 7111032
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TELEPHONE: 907/346-1077
FACSIMILE: 907/346-1028
tmeacham@gci.net

September 10, 2013

MEMORANDUM

To: Haines Borough Planning Commission

Re: Ocean Beauty Seafoods utility easements on Borough-
selected land (Excursion Inlet, ASLS 95-35)

From: Thomas E. Meacham, Attorney at Law 
Retained counsel, Haines Borough
Our File No. 150-1

On your agenda for review and recommendation to the Haines Borough Assembly is a proposed Record of Survey and a proposed Easement Grant (Utility Line Easements). These involve existing improvements on the Excursion Inlet land that the Borough expects to eventually receive by patent from the State of Alaska, through the Municipal Land Selection Act process. A survey of this land has been completed (Alaska State Land Survey 95-35), and the Planning Commission approved it on March 14, 2012. ASLS 95-35 is expected to be approved by the State, and will then be recorded. Sometime after this recording, the State will issue its land patent to the Borough.

The Planning Commission's role in reviewing proposed Borough easement grants is established in Borough Code Section 14.16.190 C.

Background. The Borough has management authority over the Excursion Inlet tract, in anticipation of receiving title from the State to its approved selection. Ocean Beauty Seafoods LLC and its predecessor companies have constructed and maintained utility line improvements (water lines, sewer lines, and power lines) on this tract for many years, dating even prior to statehood. Ocean Beauty, through its predecessor companies, had many years ago applied to the Alaska Division of Lands (ADL) for easements covering these utility lines, but Ocean Beauty had never perfected its application.

In 2012, DNR directed Ocean Beauty to submit an as-built survey of their utilities if they wanted to complete their ADL easement applications. Ocean Beauty hired Lounsbury and Associates to perform the survey, but during the DNR review process of the as-built survey, the State Attorney General's office advised DNR that the agency no longer had the ability to grant such easements, due a time limit of 25 years from the date

of original application. This conclusion did not mean that Ocean Beauty's existing improvements disappeared, but instead that it would be up to the Haines Borough, as successor in title to the State, to conclude the longstanding easement application of Ocean Beauty involving its existing utility lines.

Lounsbury and Associates has prepared a proposed Record of Survey for Ocean Beauty that depicts the location and widths of the utility easements for which Ocean Beauty has applied. A copy of that Record of Survey is in your packet.

Also in your packet is a proposed Easement Grant (Utility Line Easements) that has been negotiated in concept between Ocean Beauty and the undersigned, as retained counsel for the Borough. This proposed Easement Grant, together with the Record of Survey, are before the Planning Commission for your review and recommendations to the Borough Assembly. The Assembly will be the final authority regarding Ocean Beauty's request for legal recognition of its utility easements, as pre-existing improvements on this land that the Borough will receive from the State.

When the State issues its patent to ASLS 95-35 (which could be a number of months from now), it is intended that the Borough will issue a quitclaim to Ocean Beauty regarding the easements, simply confirming the actions the Borough had earlier taken with its management authority over the Excursion Inlet land, but before issuance of the state patent.

Recommendation. Because Ocean Beauty's utility improvements have been in place for many years, I am recommending that the proposed Easement Grant be reviewed and sent forward with your approval to the Borough Assembly, for its action by way of adoption of a noncode ordinance under authority contained in the "negotiated lease" provision of Borough Code 14.16.160. The proposed Easement Grant (Utility Line Easements) is drafted with this approach in mind.

Under this approach, Ocean Beauty's lease from the Borough would not be treated as a "new" easement lease for new utilities to be constructed in the future. Instead, the proposed lease recognizes Ocean Beauty's position, as an existing occupant, to its claim of "valid existing rights" to easements for utilities constructed by it and which that have long been in place, even before the Borough applied for ownership of this land.

Thus, the present situation is quite similar to the mandatory provisions in state law that require recognition of the pre-statehood claims of "existing tidelands occupants," as legal preference right holders, any time the State proposes to transfer ownership of tidelands to a local government (Alaska Tidelands Act, AS 38.05.820-.825). These "occupants" did not have to show that they held any earlier, vested property right to the tideland (and in fact most did not); they needed only to show their occupancy and

improvement of tidelands before a certain date specified in the statute, and their continued use.

Because the present circumstances of Ocean Beauty on the Excursion Inlet uplands appear to be substantially parallel to this category of longstanding, existing occupants of tidelands, the recommended easement grant to Ocean Beauty would require Ocean Beauty to pay the costs of survey (which Ocean Beauty has done), but it would not be assessing a “fair market value” easement fee or lease rental charge for the easement grant. (The Borough would ordinarily be required to assess an easement rental fee based on a percentage of the fair market value under Borough Code 14.16, if this were a “brand-new” utility easement request coming from a new proposed user of Borough land).

If the Planning Commission takes the action recommended in this Memorandum, the Assembly’s consideration of the proposed Easement Grant to Ocean Beauty will be accompanied by a draft noncode ordinance to implement the Grant.

Easement Grant provisions. The proposed Easement Grant contains standard easement provisions intended to give both parties a level of legal certainty. Among the provisions are the following:

a. incorporation of the Record of Survey that gives the precise location of the utility easements (Paragraphs 1 and 2);

b. recognition of the existing location of Ocean Beauty’s utility lines within those easements, and its right to repair or install new lines within these easements (Paragraph 3);

c. Ocean Beauty’s sole responsibility for repair and maintenance of the subject utility lines (Paragraph 6);

d. the fact that the easements “run with the land,” meaning that the easement grant has no fixed termination date, and that if either Ocean Beauty or the Borough transfers its interests in this land, the easements will continue to exist in accordance with the terms of the Easement Grant (Paragraph 7);

e. the setting of a period of five continuous years of non-use by Ocean Beauty of any particular easement segment, after which time the Borough could give notice to Ocean Beauty that it will terminate the unused segment of the easement, resulting in the extinguishment of that easement segment (Paragraph 9); and

f. Ocean Beauty's obligation to remove improvements and restore to an acceptable level any easement segment it voluntarily abandons, or that is extinguished by non-use (Paragraph 10).

Please contact me, through Mark Earnest, Borough Manager, if any member of the Planning wants further clarification regarding any of the issues discussed in this Memorandum.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-304
Assembly Meeting Date: 9/24/13

Business Item Description:	Attachments:
Subject: Election procedures in case of >40% votes.	1. Ordinance 13-07-334, adopted 9/10/13 2. 9/18/13 Memo from the Mayor
Originator: Assembly Member Debra Schnabel	
Originating Department:	
Date Submitted: 7/1/13	

Full Title/Motion:
The mayor requests a motion to reconsider the 9/10/13 vote to adopt Ordinance 13-07-334 so it may be amended to change the definition for "votes cast."
Short of that, she plans to exercise her right of veto, as allowed by HBC 2.16.030.

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
------------------------	--

Summary Statement:
After three public hearings, this ordinance was adopted on 9/10/13. The mayor was absent during that meeting. She believes this ordinance needs to be corrected...it is flawed.... She requests a motion to reconsider so that she might propose an amendment to the definition of "votes cast." If this does not happen, she plans to exercise her right of veto.

Per HBC 2.16.030(B), the mayor's right of veto must be exercised and submitted to the assembly with a written explanation prior to or at the next assembly meeting. A veto may be overridden by a super majority of affirmative votes of the assembly within 21 days following the exercise of the veto.

Referral:

Sent to: Government Affairs & Services Committee	Date: 7/23/13
Recommendation: Hold a 2nd PH Refer to:	Meeting Date: 8/12/13

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 7/23, 8/27, 9/10/13
Meeting Date(s): 7/9, 7/23, 8/27, 9/10, 9/24/13	Tabled to Date:

Adopted

**AN ORDINANCE OF THE HAINES BOROUGH AMENDING BOROUGH CODE
TITLE 2, SECTIONS 2.68.510 TO ALTER RUNOFF ELECTION PROCEDURE.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendments shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 2.68.510. Section 2.68.510 of the Haines Borough Code of Ordinances is amended to read as follows:

NOTE: **Bolded**/UNDERLINED ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

2.68.510 Votes required to elect – Runoff elections.

A. Votes required to elect. A candidate for borough office is required to receive at least 40 percent of the votes cast. Votes cast shall be determined by the number of voters voting.

B. Runoff elections. If in a borough election an office is not filled because candidates received fewer than 40 percent of the votes cast, the borough shall hold a runoff election between the **top two unseated** candidates ~~receiving the greatest number of votes for the office~~ on the first Tuesday in November following the canvass and certification as in HBC 2.68.500. There shall be two runoff candidates for each office to be filled. Notice of the runoff election shall be published at least 10 days before the election date. The person(s) receiving the highest number of votes shall be elected following canvass and certification of the election as provided in HBC 2.68.500.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 10th DAY OF SEPTEMBER, 2013.

ATTEST:


Julie Cozzi, MMC, Borough Clerk




Jerry Lapp, Deputy Mayor

Date Introduced: 07/09/13
Date of First Public Hearing: 07/23/13 – referred to G.A.S. Committee
Date of Second Public Hearing: 08/27/13
Date of Third Public Hearing: 09/10/13 - Adopted

Memorandum

Haines Borough
Office of the Mayor
103 Third Avenue S.
Haines, Alaska 99827
sscott@haines.ak.us
Voice (907) 766-2231 ext. 30

September 18, 2013

To: Haines Borough Assembly members

Cc: Mark Earnest, Manager
Julie Cozzi, Borough Clerk;

From: Stephanie Scott, Mayor, Haines Borough

Subject: Reconsideration/Veto of ordinance 13-07-334 Amending Borough
Code Title 2, Sections 2.68.510 to Alter Runoff Election Procedure

I have an abiding respect for the will of the Assembly, so it is with considerable humility that I set out to try to convince you to reconsider your vote of September 10 on the above referenced ordinance. If the Assembly passes a motion to reconsider and then moves on to amend and adopt, a veto is moot. However, I find myself in the awkward position of having to announce and explain a veto on the 23rd if I wish to retain that option. And I do wish to secure a veto as an option in this matter.

Both the Charter and the Code are very clear on the timeline for vetoes.¹ The time line forces an announcement of a veto on the 23rd, but it makes me very unhappy that the supermajority required to override a veto is not expected to be present on the 23rd. Thus, should it come to the announcement of a veto, and if you wish to override prior to the election, you will need to call a special meeting Friday, Saturday, or Monday (September 27,28, or September 30).

¹ The Haines Borough Charter, Article V, Executive Branch, Section 5.02 , Powers of the Mayor, states: (C) Veto. The mayor may veto an ordinance, resolution, motion, or other action of the assembly and may strike or reduce appropriation items. The veto does not extend to:

- (1) actions of the board of equalization or the board of adjustment;
- (2) the appointment or dismissal of personnel;
- (3) adoption or repeal of a manager plan of government;
- (4) an ordinance adopted under AS [04.11.498](#).

The veto must be exercised and submitted to the assembly with a written explanation prior to or at the next assembly meeting. The assembly, by supermajority vote of the total membership, may override a veto any time within twenty-one days after its exercise. The mayor's failure to sign a legislative measure shall not constitute a veto.

The restrictions and timeline are re-stated in two sections of the code: HBC 2.16.030 and HBC 2.10.220

Discussion of the Matter.

The section of Ordinance 13-070-334 as adopted on September 10 that I would like you to consider amending reads: "Votes cast shall be determined by the number of voters voting."

I would like you to amend this phrase to read "Votes cast shall be calculated as the number of votes cast divided by the number of vacancies."

If a veto takes place, and cannot be overridden prior to the October local election the upcoming election will be controlled by the original HBC 2.68.510². I have been assured by the Borough Clerk and Election Official that a count and outcome controlled by the original 2.68.510 will be manageable and legitimate.

Votes Cast vs. Voters Voting.

The reason I am asking you to reconsider or to deal with a veto turns on my concern about counting **voters** in an election instead of **votes**. A "voter" is a person, a "vote" is the action a person takes. It is a positive action. A "voter" can go to the polls and return an unmarked ballot, an incompletely marked ballot, a mis-marked ballot. Under our current regulations, none of those ballots would count toward the total votes cast. The 40% threshold is measured against the votes properly cast, not the number of voters who cross the threshold!

Basically, underlying every vote is the assumption that voters will follow the rules: a voter has to be qualified **and** a voter has to follow the instructions on the ballot. What is counted are properly cast votes, not voters. In other words, it is insufficient to just show up; a voter has to show up **and** follow the rules.

There are two premises at work here:

- 1) Not voting does not count as a "no" vote because voting is a positive act. It is something a voter "does." If they do not mark their ballot, ergo, they have not voted. I acknowledge that people have many reasons for not voting on some sections of any ballot. But when they do, their "not vote" is not counted into the total in anyway!
- 2) There are rules that govern voting. Voters are expected to follow the rules in order to weigh in. The rules are not egregious.

The math of counting voters vs. votes.

² 2.68.510 Votes required to elect – Runoff Elections

If in a borough election an office is not filled because candidates received fewer than 40 percent of the votes cast, the borough shall hold a runoff election between the candidates receiving the greatest number of votes for the office on the first Tuesday in November following the canvass and certification as in HBC 2.68.500. There shall be two runoff candidates for each office to be filled. Notice of the runoff election shall be published at least 10 days before the election date. The person(s) receiving the highest number of votes shall be elected following canvass and certification of the election as provided in HBC 2.68.500.

If the number of voters is the factor that goes into establishing the 40% threshold, then the 40% threshold will be magnified. Rather than relax this threshold as was originally suggested when we considered presenting candidates in a list, we will have emphasized the threshold, nearly guaranteeing runoff elections. As previously reported, many municipalities that present candidates as a list in service of providing greater choice to the electorate, also all candidates receiving the highest vote (simple majority) to be seated. In order to make that change, we need to change our Charter.³

An example using “voters voting” to determine the 40% threshold: 10 people go to the polls. Only 1 person votes for 2 candidates. Under the ordinance adopted on Sept. 10, a candidate would have to receive 40% of the voters voting – or 4 votes. But only 1 of the 10 voters voted!

If you use instead, “votes cast” (with the presumption of “properly cast” as described HBC 2.68.390,) each candidate received 100% of the votes cast! Because of the way people marked their ballots, both candidates crashed through the 40% barrier; both would be seated.

Thus, to be absolutely crystal clear, as long as we maintain a 40% threshold to seat a candidate in the local election (as opposed to a runoff), we need to calculate that threshold as **40% of the votes cast divided by the number of vacancies**. Not to do so, creates an egregiously high threshold based on 40% of the people who come to the polls!

Why define “votes cast” as the number of votes cast divided by “the number of vacancies”? This calculation is applied to show that there are two distinct offices to be filled. In the October 2013 election, I will be casting 2 votes, 1 for each office. I will be putting one vote in the pot for one office, and the other vote in the pot for the other office – not two votes into one pot. I vote only once for my preferred candidate for office, so the total number of votes cast needs to be divided by the number of offices for which I can cast a vote in order to find out if any one candidate for one of the two offices has received 40% of the vote.

Again, if you do not qualify “votes cast” as the number of votes cast divided by the “number of vacancies,” you exaggerate the 40% threshold – again almost predetermining the need for a run off.

An example:

³ The Haines Borough Charter stipulates

Article XVI Elections

Section 16.04 Election Procedures

All borough elections shall be nonpartisan. The assembly by ordinance shall establish procedures for regular and special borough elections, including provisions for absentee voting.

If no candidate receives more than 40 percent of the votes, the seat will be filled by the winner of a runoff election between the two candidates receiving the most votes.

In case of a tie vote for borough office, the assembly shall determine the successful candidate by lot.

There are two vacancies. The ballot says “vote for 2.” There are 4 candidates.

Candidate A receives 5 votes;
Candidate B receives 4 votes;
Candidate C receives 3 votes;
Candidate D receives 2 votes.

Total votes cast = 14. 40% of the votes cast is 5.6. No one achieves the threshold. A runoff is required between Candidates A and B.

Total votes cast divided by the number of vacancies: $14/2 = 7$; 40% of 7 is 2.8. Candidates A and B are seated, because as long as the 40% threshold is met, simple majority prevails.

To summarize:

Please reconsider and amend Ordinance 13-07-334 to read in Section A: “Votes cast shall be calculated as the number of votes cast divided by the number of vacancies.”

I request this action of the Assembly in order to preserve the rule of counting properly cast votes and to avoid establishing an unachievable 40% threshold.

Should the Assembly disagree with my analysis of the situation, please accept the above discussion as my written justification for vetoing Ordinance 13-07-334. I submit a veto based on

- 1) my analysis that the act of voting is defined as to mark a ballot, that to not mark a ballot cannot be interpreted as a vote of any kind;
- 2) that to calculate the 40% threshold as 40% of the people who come to vote as opposed to 40% of the votes flies in the face of the act of exercising a vote and creates an impossibly high threshold for office holding; and
- 3) that to fail to divide the number of votes cast by the number of vacancies to calculate the 40% threshold also contributes to a dangerously high threshold to achieve elected office.