

Haines Borough
Borough Assembly Meeting #255

AGENDA

October 8, 2013 - 6:30 p.m.

Location: Assembly Chambers, Public Safety Bldg.

Stephanie Scott,
Mayor

Dave Berry Jr.,
Seat A
Assembly Member

Steve Vick,
Seat B
Assembly Member

Debra Schnabel,
Seat C
Assembly Member

Joanne Waterman,
Seat D
Assembly Member

Norman Smith,
Seat E
Assembly Member

Jerry Lapp,
Seat F
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 – Police Dept Report
- 8C – CFO Report
- 8D – Chilkat Center Report
- 8E – Public Facilities Report
- 11A2 – Adoption of Resolution 13-10-501
- 11A3 – Adoption of Resolution 13-10-502
- 11A4 – Adoption of Resolution 13-10-503
- 11A5 – Adoption of Resolution 13-10-504
- 11A6 – Adoption of Resolution 13-10-505
- 11A7 – Adoption of Resolution 13-10-506
- 11A8 – Adoption of Resolution 13-10-507
- 11A9 – Adoption of Resolution 13-10-508
- 11A10 – Adoption of Resolution 13-10-509
- 11B1 – Introduction of Ordinance 13-10-351
- 11C1 – Advisory Board Appointment

* 4. APPROVAL OF MINUTES – September 24 Regular

5. PUBLIC COMMENTS [Any topics not scheduled for public hearing]

6. MAYOR'S COMMENTS/REPORT

7. PUBLIC HEARINGS

A. Ordinance 13-09-349 – First Hearing

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 and was introduced on 9/24/13. **Motion:** Advance Ordinance 13-09-349 to a second public hearing on 10/22/13.*

B. Ordinance 13-09-350 – First Hearing

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 and was introduced on 9/24/13. The planning commission considered the matter on 9/12 and also recommends it. **Motion:** Advance Ordinance 13-09-350 to a second public hearing on 10/22/13.*

8. STAFF/FACILITY REPORTS

- A. **Borough Manager** - *Report on STIP Amendment 8 (other reports attached to various agenda bills)*
- * B. **Police Department** – *Monthly Staff Report*
- * C. **Chief Financial Officer** – *FY13 General Fund Financial Report*
- * D. **Chilkat Center** – *Facility Report of September 2013*
- * E. **Public Facilities Director** – *Project Update*

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

- A. **Assembly Standing Committee Reports**

10. UNFINISHED BUSINESS

A. **Ordinance 12-10-308**

An Ordinance of the Haines Borough amending Haines Borough Code Title 3 to establish a Vehicle Retirement Program Fund, to levy a motor vehicle registration tax, and to exempt from property taxes all vehicles subject to the registration tax.

This was introduced on 10/23 and the first hearing was 11/6. Following the second hearing on 11/27, the assembly postponed it to the 12/11 meeting when it was amended. Following discussion, the assembly postponed the matter until after a towing RFP has been issued and the proposals reviewed. Staff is ready to present the information. The manager recommends ordinance adoption.

Main Motion already on the Table: "Adopt Ordinance 12-10-308."

11. NEW BUSINESS

A. **Resolutions**

1. **Resolution 13-10-500**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to enter into a professional services agreement with Alaska Assessment Assistance to provide tax assessing and staff training services for Fiscal Year 2014.

*This resolution is recommended by the borough manager. The plan, as previously reported, is to transition to a full-time, staff Land Assessor by July 1, 2014. **Motion:** Adopt Resolution 13-10-500.*

* 2. **Resolution 13-10-501**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Caselle, Inc. in the amount of \$23,000 for the purchase and installation of Caselle's Property Tax Collection module.

*This resolution is recommended by the borough manager and finance director. **Motion:** Adopt Resolution 13-10-501.*

* 3. **Resolution 13-10-502**

A Resolution of the Haines Borough Assembly authorizing the Manager to enter into a Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities to conduct the Haines Rail Assess Pre-Feasibility Study, accepting grant funds in the amount of up to \$100,000 from the ADOT&PF for expenses incurred in the conduct of the Study, and authorizing the Manager to enter into a sole-source contract with ALCAN RaiLink/PROLOG Canada to perform the Study.

*On 9/10/13, the assembly passed a motion directing 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. **Motion:** Adopt Resolution 13-10-502.*

* 4. **Resolution 13-10-503**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of surplus material from the demolition of the Port Chilkoot Dock by any of the methods specified in Haines Borough Code 14.24.010 (Disposal of personal property).

*This resolution is recommended by the borough manager and the director of public facilities. **Motion:** Adopt Resolution 13-10-503.*

11. NEW BUSINESS

A. Resolutions ---continued---

*** 5. Resolution 13-10-504**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with PND Engineers, Inc. for an amount not to exceed \$183,319 for a test pile investigation and additional site plan concept for the South Portage Cove Harbor Expansion project.

This resolution is recommended by the borough manager and the director of public facilities.
Motion: Adopt Resolution 13-10-504.

*** 6. Resolution 13-10-505**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with PND Engineers, Inc. in the amount of \$89,506 for a loss of fill investigation at Lutak Dock.

This resolution is recommended by the borough manager and the director of public facilities.
Motion: Adopt Resolution 13-10-505.

*** 7. Resolution 13-10-506**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Murray and Associates, P.C. in the amount of \$11,900 for Haines Library Building Controls Replacement Engineering.

This resolution is recommended by the borough manager and the director of public facilities.
Motion: Adopt Resolution 13-10-506.

*** 8. Resolution 13-10-507**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to execute a contract change order with Pacific Pile & Marine, LP for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$53,998.

This resolution is recommended by the borough manager and the director of public facilities.
Motion: Adopt Resolution 13-10-507.

*** 9. Resolution 13-10-508**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of two Haines Borough Police Department hybrid Ford Escape SUVs in accordance with Haines Borough Code 14.24.010 (Disposal of personal property).

This resolution is recommended by the borough manager and the director of public facilities.
Motion: Adopt Resolution 13-10-508.

*** 10. Resolution 13-10-509**

A Resolution of the Haines Borough Assembly supporting "BackRoads Alaska" marketing to cruise lines.

This resolution is recommended by the borough manager and tourism director. **Motion:** Adopt Resolution 13-10-509.

B. Ordinances for Introduction

*** 1. Ordinance 13-10-351**

An Ordinance of the Haines Borough providing for the addition or amendment of specific line items to the FY14 budget.

This ordinance is recommended by the borough manager and chief financial officer. **Motion:** Introduce Ordinance 13-10-351 and set a first public hearing for 10/22/13.

C. Other New Business

*** 1. Board Appointments**

An appointment application has been received for a seat on the Parks and Recreation Advisory Committee. The mayor plans to make the appointment and seeks assembly confirmation. **Motion:** Confirm the mayor's appointment of Susan Luescher to the Parks and Recreation Advisory Committee for a term ending 11/30/16.

11. NEW BUSINESS

C. Other New Business ---continued---

2. Herbicides: Mayor Request for Assembly endorsement of resolution re. herbicides drafted for the Southeast Conference of Mayors

*The Southeast Conference of Mayor's is meeting via teleconference on October 22, and the mayor requests assembly authorization for her to vote in favor of adoption. **Motion:** Endorse the herbicides resolution drafted for the Southeast Conference of Mayors and authorize the mayor to vote in favor of adoption.*

3. Ordinance 13-08-343

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

The following motion failed 2-3 during the 9/24/13 assembly meeting: "adopt Ordinance 13-08-343." Smith and Waterman voted yes and Vick, Schnabel, and Lapp voted no (Berry was absent).

A member of the prevailing side, assembly member Vick, intends to ask for reconsideration. HBC 2.10.170 says, "[A] motion to reconsider requires a majority of affirmative votes and, if it prevails, the subject shall be open to debate and amendment in the same manner as the original question. Debates on motions to reconsider shall be limited to 25 minutes and no member shall speak for more than five minutes."

4. Process for Sorting through Initial Manager Applicants: Matrix or Informal?

The assembly will discuss the process for reviewing and short-listing the applicants for the borough manager position. 20 applications were received by the 5pm, October 3 deadline. The assembly is scheduled to meet as a committee of the whole on Wednesday, October 9, 6 p.m. to screen and review the applications.

5. Cashing in of Leave Benefits - Manager

*This is allowed by the manager's contract with assembly approval. **Motion:** Authorize the cashing in of leave benefits, as allowed by the manager's contract and as requested by the manager.*

6. Executive Session – Borough Officer Evaluations

*The manager plans to review the borough officer evaluations with the assembly. This review will take place in executive session as allowed by AS 44.62.310(c)(2) and Haines Borough Charter Section 18.03. **Motion:** Move into executive session as allowed by AS 44.62.310(c)(2) and Haines Borough Charter Section 18.03 to review the manager's evaluation of the borough clerk and the chief financial officer; this matter qualifies for executive session because this is a personnel matter and a public discussion may tend to prejudice the character and reputations of those involved; Mark Earnest, Julie Cozzi, and Jila Stuart are requested to attend.*

12. CORRESPONDENCE/REQUESTS

13. SET MEETING DATES

14. PUBLIC COMMENTS

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

16. ADJOURNMENT



Haines Borough
Borough Assembly Meeting #254
September 24, 2013
MINUTES

Draft

1. **CALL TO ORDER/PLEDGE TO THE FLAG:** Mayor **SCOTT** 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: Mayor Stephanie **SCOTT**, and Assembly Members Jerry **LAPP**, Debra **SCHNABEL**, Norman **SMITH**, Joanne **WATERMAN** and Steve **VICK**. Absent: Dave **BERRY**.
Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Carlos **JIMENEZ**/Director of Public Facilities, Simon **FORD**/Interim Police Chief, and Michelle **WEBB**/Deputy Clerk.
Visitors Present: Karen **GARCIA**/CVN, Margaret **FRIEDENAUER**/KHNS, Bill **KURZ**, Libby **KURZ**, Janet **KURZ**, Jack **WENNER**, Rob **GOLDBERG**, Diana **LAPHAM**, Danny **GONCE**, Rob **MILLER**, George **CAMPBELL**, and others.
3. **APPROVAL OF AGENDA & CONSENT AGENDA**
The following items were on the published 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

Motion: **LAPP** moved to “approve the agenda/consent agenda,” and the motion carried unanimously.

***4. APPROVAL OF MINUTES – September 10 Regular**

5. PUBLIC COMMENTS

DUBBER thinks this is a good time to have some public hearings to discuss the form of government people prefer. Also, he would not like to have the departing manager be the one to hire a new chief of police. **B.KURZ** agreed with those comments.

6. MAYOR’S COMMENTS/REPORT

Mayor **SCOTT** thanked the assembly, staff, and members of the public for the outpouring of well-wishes during her illness. She thanked **LAPP** for presiding over the last meeting in her absence. She really likes his style.

Regarding the Haines Highway Project, she mentioned the letter Senator Begich sent to the Federal Highways Administration. It contained factual errors, and the ADOT is preparing a response.

LAPP reported on the recent Southeast Conference in Sitka. There were presentations by several mining companies. They showed how they can coexist with and protect the surrounding environment. They also passed a resolution regarding putting through the Eisenbeck Road to get people better healthcare in emergencies, etc.

Mayor **SCOTT** said the previous week she met with the borough’s lead financial auditor. He was effusive with his praise for the borough’s finance department. The auditors will report to the assembly in November.

7. PUBLIC HEARINGS

A. Ordinance 13-08-341 – Third Hearing

An Ordinance of the Haines Borough amending Borough Code Section 18.90.060(1) to add a size limitation for small informational signs.

Mayor **SCOTT** opened and closed the public hearing at 6:42pm; there were no public comments.

Motion: **LAPP** moved to “adopt Ordinance 13-08-341,” and the motion carried unanimously in a roll call vote. There was no discussion.

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.

Mayor **SCOTT** opened at 6:43pm.

MILLER spoke as a member of the planning commission. He doesn't believe the state wants to inspect the systems during their life. A modern system needs very little maintenance. It's a burden the borough should not assume.

Hearing no further comments, the hearing was closed at 6:45pm.

Motion: **VICK** moved to "adopt Ordinance 13-08-342," and the motion carried unanimously in a roll call vote. There was no discussion.

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.

Mayor **SCOTT** opened the public hearing at 6:46pm.

CAMPBELL spoke against the ordinance. What the planning commission is asking for and what is in the packet don't seem to match. This will complicate people's lives.

GOLDBERG, planning commission chair, said there is a misunderstanding about this ordinance. Commercial uses have a zero set-back, residential has a 25-foot, and industrial has a 50-foot when in a residential area.

B.KURZ said he has attended many planning commission meetings. He doesn't recall residents of that area complaining or bringing a problem to the borough's attention. This seems to be an effort to fix something that isn't necessarily broken.

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

Motion: **VICK** moved to "postpone Ordinance 13-08-343 until the planning commission has a chance to review it and confirm it is correctly written," and the motion failed 2-3 with **WATERMAN**, **SMITH**, and **VICK** opposed.

SCHNABEL said she finds it odd the planning commission has not come forward to say it needs additional review. She spoke against this motion. **GOLDBERG** said he attended the September 10 assembly meeting and explained the ordinance at length. He also wrote up written comments that are in the packet. He is not sure what else to provide. **EARNEST** asked if the ordinance is different than what the planning commission put forward. **GOLDBERG** said it is the same. They took the townsite setbacks and applied them to the General Use Zone. **WATERMAN** spoke against postponing the ordinance. The planning commission passed this unanimously, and the ordinance has not changed since that time. There is no reason to send it back to them.

Motion: **VICK** moved to "adopt Ordinance 13-08-342," and the motion failed 2-3 in a roll call vote with **VICK**, **SCHNABEL**, and **LAPP** opposed.

SMITH said this is the third time the assembly has considered this. If there is an issue, he doesn't see it. **SCHNABEL** encouraged the assembly not to support this, because she believes it encourages spot zoning. To take the same regulations in the townsite service area and apply them to the General Use Zone (GU) is to allow residential neighborhoods to influence and affect the use choices within those districts. Generally, a developer takes a large piece of land and subdivides it into 3-acre lots. She appreciates the planning commission's desire to protect the residents' land investments, but it creates an undue burden on those who purchase land in the GU for industrial use. People need to be able to invest in property and know they will be able to use it in the way they choose. **SMITH** said he remembers dealing with this pertaining to a helipad being developed. **SCOTT** said the GU has no uses. Everything is permitted except for a couple of things that require a conditional use permit, such as heliports. The flaw in this ordinance is that it is tagged to uses. There are no uses in the GU. No one is obligated to announce their planned uses. The only way to do it is to establish universal setbacks. If they wanted to amend, they could insert language outside of the chart. She believes the planning commission should come back with universal setback language. She agrees there are neighbor conflicts. **VICK** and **LAPP** said the mayor made a good point. **SMITH** said he would hope the mayor would provide her explanation to the planning commission.

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.

Mayor **SCOTT** opened the public hearing at 7:11pm.

FRIEDENHAUR attended the personnel committee meeting when this was discussed. It was a good discussion and everyone came to a middle ground. The amendments the committee came up with are a good compromise. Part of it has to do with having summaries available for certain positions. As long as the summaries continue to be done as they are, it will be a good thing. They provide helpful information without saying too much.

Hearing no further comments, the mayor closed the public hearing at 7:13pm.

Motion: **WATERMAN** moved to “adopt Ordinance 13-08-347,” and it was amended by replacing the ordinance in its entirety with the substitute ordinance drafted by the borough attorney and further amended by adding to 2.72.080(D)(8) all borough officers and department directors. The main motion as amended carried unanimously in a roll call vote.

During the discussion, **SCHNABEL** asked why employment applications other than manager, borough clerk, chief fiscal officer, and chief of police would still remain confidential. **EARNEST** responded they don't need to be. He doesn't have a strong feeling of keeping it limited to those four positions. The borough currently makes available applications for more positions than these. The idea was to bring something forward for discussion. He would not be opposed to expanding this to additional positions. **SCHNABEL** believes the public has the right to know how many applicants and who they are. She moved to amend the substitute ordinance by deleting '*employment applications and examination*' from 2.72.080(A), but the motion failed with everyone else opposed. The manager spoke against that amendment. Examinations means police officer exams, etc. so he would be opposed to their release. There is also some personal information on some applications. He would be opposed to having applications for entry level positions open for public inspection. **LAPP** asked if the committee went over this. He likes it the way it is. **WATERMAN** said **FRIEDENHAUR** summarized the good compromise. They did discuss the language in A, and they all agreed that language is acceptable. **SCHNABEL** moved to amend the substitute ordinance by deleting '*applications and*' from 2.72.080(A), but the motion failed with **VICK**, **WATERMAN**, and **LAPP** opposed. **SCHNABEL** explained that with her amendment, examinations would remain confidential, but applications would be open to examination by the public. **VICK** is not in favor of this. **EARNEST** would not support this amendment. It is addressed in subsection D(8) which was added after the personnel committee discussion. That is the language he could support. This ordinance does not affect the names of the people who are applying for jobs. That's never been part of this ordinance or this discussion. It does not affect the disclosure of names. **SCHNABEL** believes names are not enough for the public to be able to discern the pool of applicants for a position. The public has the right to know who has applied for a public position. She sees no reason to protect job applicants. She proposed another amendment to add all borough officers and department directors to subsection D(8), and that motion was successful with **WATERMAN** opposed. **EARNEST** said he would not oppose this particular amendment, because it is historically what the borough has done.

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.

Mayor **SCOTT** opened and closed the public hearing at 7:38pm; there were no public comments.

Motion: **LAPP** moved to “adopt Ordinance 13-08-342,” and the motion carried unanimously in a roll call vote. There was no discussion.

8. STAFF/FACILITY REPORTS

A. Borough Manager – 9/24/13 Report

EARNEST summarized his written 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

The assembly had a brief discussion about this, and it was noted a private individual is currently building a boat storage structure in town.

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

A. Planning Commission – *Minutes of 8/8/13*

* B. Assembly Standing Committee Reports

VICK reported the Government Affairs & Services Committee met to discuss the process to amend the Heliskiing map. They need to have another meeting to continue the discussion. They talked about expanding the 500-word limit for amendment proposals. Also having the committee meet annually is not necessarily good. There should possibly be a two- or three-year break between revisions to provide time to try things out.

11C2. Manager Transition Plan – moved ahead in the agenda from Other New Business due to the manager being ill and having to leave early.

Motion: **LAPP** moved to “accept the manager’s transition plan dated 9/24/13,” and the motion carried 4-1 in a roll call vote with **SMITH** opposed.

SCHNABEL had two questions: 1) what major decisions need to be made within the next three months, and 2) did a conversation ever ensue between the manager and the mayor about the mayor serving as borough manager? In the past, Mayor Mike Case stepped in as acting borough manager. **SCOTT** said that was not discussed, and she is not available for that given her current health status. **EARNEST** assured he is working on a list of major decisions that will include summaries. It will be coordinated with staff so there is input and understanding. **SCHNABEL** is not at this present time an applicant although she has been instructed not to participate. She asked if she should participate in any decisions regarding the transition plan. **SCOTT** does not believe her potential application would make it inappropriate for her to be involved with the policy of a transition plan. **LAPP** said we are only looking at one to three months. **EARNEST** said the draft schedule makes certain assumptions. One is that the successful candidate would be coming from out of town. If someone could come sooner, obviously it could shorten the timeframe. He noted holidays are in this time period. There are disruptions with schedules and availability, so he made the schedule longer than normal. It also assumes the assembly will choose not to continue soliciting applications after October 3. **LAPP** said previous interim managers used office staff to help them in the position anyway. He believes appointing **COZZI** as interim is the best scenario. **SMITH** thinks **COZZI** can serve well as interim manager. He doesn’t believe there will be a manager on board until after the first of the year. Mayor **SCOTT** said when she was at the Alaska Municipal League meetings in Valdez, she spent some time with the Skagway manager. The newness of staff and learning the community were his biggest challenges and obstacles. She said Haines is fortunate to have senior staff available. **EARNEST** said since the recommended transition plan includes appointing the deputy clerk as interim borough clerk, it would be important to hire someone to temporarily fill her duties. The deputy clerk is a union position and in the collective bargaining agreement there is a requirement for a 20% increase for interim out of class service. There will also be a need for some overtime. All of this is within what is currently budgeted. Mayor **SCOTT** asked if the appointments would be made by accepting the plan, and that was confirmed to be the case. **SCHNABEL** is concerned and needs to feel comfortable that the nature of the work in the next three months is something that can be handled. **EARNEST** said there is already a team approach that will continue. Each and every staff member understands the importance of enhancing that coordination. He is confident that will happen. **SCHNABEL** wondered why the Executive Assistant was not considered to be interim manager. Mayor **SCOTT** said it is quite common in Alaska for municipal clerks to become municipal managers. She has every confidence the clerk will be able to delegate as necessary and identify areas where additional help is needed.

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 was 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. A motion to amend to change the date of the public hearing was needed.

Motion already on the floor: Advance Ordinance 13-08-344 to a second public hearing on 9/10/13.

Primary Amendment: **VICK** moved to "change the second public hearing from 9/10/13 to 10/8/13," and the motion failed 2-3 with **SCHNABEL**, **VICK**, and **LAPP** opposed.

The mayor said she is opposed to this ordinance and will not support it in any form. **SCHNABEL** said she also is opposed.

The main motion failed because a new hearing date was not set.

11. **NEW BUSINESS**

A. Resolutions

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

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

The motion adopted by approval of the consent agenda: "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.

The motion adopted by approval of the consent agenda: "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.

The motion adopted by approval of the consent agenda: "Introduce Ordinance 13-09-349 and set a first public hearing for 10/8/13."

*** 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.

The motion adopted by approval of the consent agenda: "Introduce Ordinance 13-09-349 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 asked for a motion to reconsider the 9/10/13 vote to adopt Ordinance 13-07-334 so it might be amended. Short of that, the mayor expressed her plan to exercise her right of veto.

Motion: **SCHNABEL** moved to "reconsider adoption of Ordinance 13-07-334," and it carried 4-1 with **WATERMAN** opposed. This returned the motion to the floor as though never voted on in the first place.

Main Motion: Adopt Ordinance 13-07-334, and it was amended to delete the existing underlined text in 2.68.510(A) and replace it with "*to be elected to office, a candidate must receive at least 40% of the votes cast for the office, determined by dividing the total number of legal votes cast for the office by the number of vacancies being filled.*" The main motion as amended carried 4-1 in a roll call vote with **WATERMAN** opposed.

Mayor **SCOTT** said she met with **SCHNABEL** and the borough clerk to discuss this issue. The main concern was inadvertently creating a difficult barrier for reaching 40%. She said we want to count votes, not voters. **VICK** is not sure the amendment wording works. **SMITH** said we're trying to count the votes marked on the ballots, not the number of voters who came in the door. **SCHNABEL** believes the election supervisor is the one who needs to understand how to count the votes. Mayor **SCOTT** said we're counting votes cast for candidates. The 40% threshold has to be established by some kind of multiplier. During the assembly's discussion,

there seemed to be an understanding that voting for any less than the number of vacancies would cause the vote to be diluted.

2. **Manager Transition Plan** – moved ahead of item 10A due to the manager being ill and needing to leave early.

12. **CORRESPONDENCE/REQUESTS**

13. **SET MEETING DATES**

A. **October 1st Borough Election Canvass** – Tuesday, 10/8, 6:00 p.m.

B. **Government Affairs & Services Committee** – Tuesday, 10/1, 5:00pm – Topic: Further discussion of Ordinance 13-07-339 to revise the commercial ski tour area map amendment process. (This was assigned to that committee during the July 23 assembly meeting and they have had one meeting thus far.)

C. **Committee of the Whole** – Wednesday, 10/9, 6:00pm – Topic: Screen and review borough manager applications.

14. **PUBLIC COMMENTS**

GOLDBERG clarified the General Use Zone (GU) setbacks proposed by the planning commission. The GU is not a no-use zone. It is multi-use. If the setbacks in the GU do not make sense then the chart in the code does not make sense since the commission suggested the same thing. Regarding temporary structures, even if an RV costs 200,000, it is not considered a permanent residence. By turning back the ordinance, the assembly has said a 5,000 yurt can be considered a permanent residence. The commission tried to put before the assembly a standard of permanent dwellings.

CAMPBELL said in Haines there are experts who have knowledge and he hopes the borough will put them to good use. He agreed with **GOLDBERG** that setbacks in the General Use Zone might be a good thing but this ordinance is not quite right, in his opinion.

15. **ANNOUNCEMENTS/ASSEMBLY COMMENTS**

In response to **CAMPBELL's** comment, **VICK** agreed Haines has local knowledge, but often the borough is required to have currently credentialed professionals for grant applications, etc.

SCHNABEL wanted to make sure the public realizes the Museums Conference currently going on in Haines is really good and everything is open to the public. Also, she would like to revisit the Downtown Revitalization Committee with the borough manager.

Mayor **SCOTT** said she will be going to Seattle this week for several medical appointments.

16. **ADJOURNMENT** – 9:28pm

Motion: **SMITH** 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.: 13-352
Assembly Meeting Date: 10/8/13

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: Planning Commission	
Originating Department:	
Date Submitted: 8/8/13	

Full Title/Motion:
Motion: Advance Ordinance 13-09-349 to a second public hearing on 10/22/13.

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. This Ordinance was introduced on 9/24/13.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 10/8/13
Meeting Date(s): 9/24/13 and 10/8/13	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: 10/08/13
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:

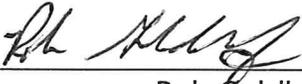
- (1) Public parks, public recreation sites, and nonprofit camps;
- (2) Schools;
- (3) Fire stations;
- (4) Lodges;
- (5) Commercial or public radio and television transmitters and towers;
- (6) Public utility facilities;
- (7) Commercial Enterprise. "Commercial enterprise" means any commercial, manufacturing, 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: 10/8/13

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: Advance Ordinance 13-09-350 to a second public hearing on 10/22/13.

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
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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. This Ordinance was introduced on 10/8/13.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 10/8/13
Meeting Date(s): 9/24/13 and 10/8/13	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: 10/08/13
Date of Second Public Hearing: ___/___/___

THOMAS E. MEACHAM
ATTORNEY AT LAW

9500 PROSPECT DRIVE
ANCHORAGE, ALASKA
USA 99507-5924

ALASKA BAR NO. 7111032
1971

TELEPHONE: 907/346-1077
FACSIMILE: 907/346-1028
tmeacham@gci.net

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

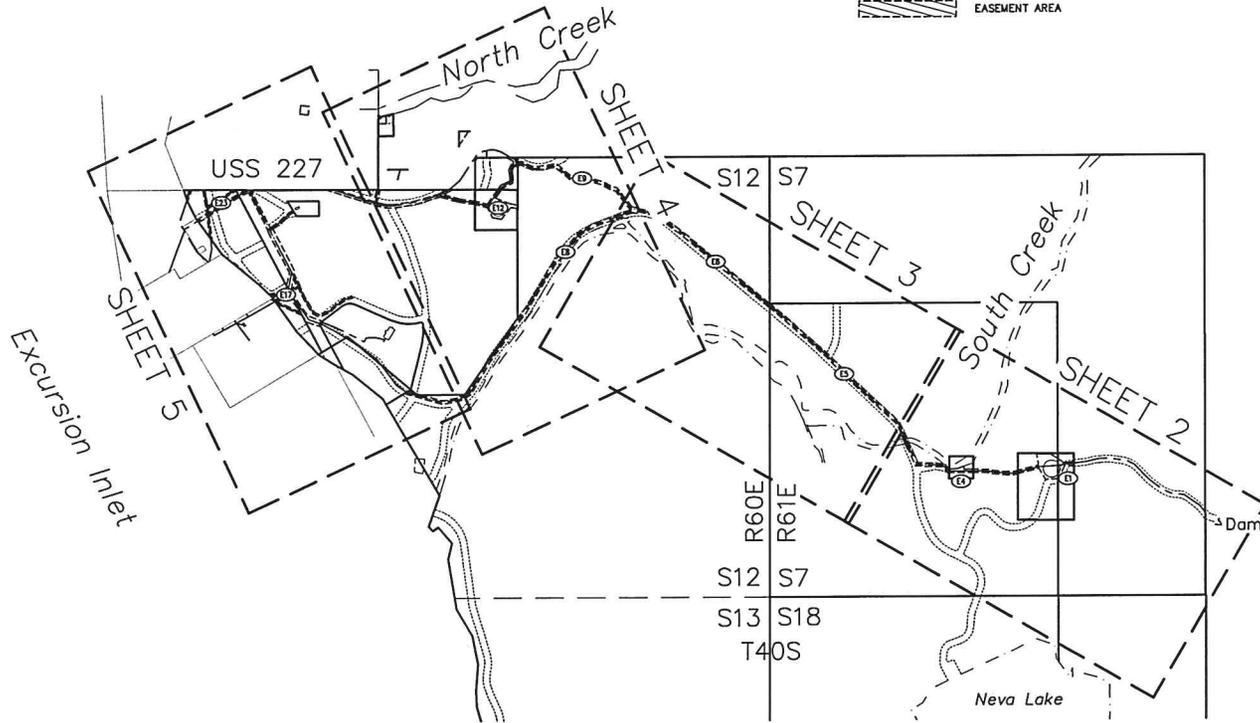
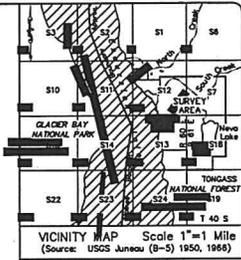
EASEMENT	TRACT	SQ.FT.	ACRES
E1	A	9,379	0.215
E2	C	42,065	0.966
E3	G	12,061	0.277
E4	D	7,964	0.181
E5	G	68,656	1.576
E6	I	44,163	1.014
E7	I	3,200	0.073
E8	I	82,544	1.895
E9	L	2,891	0.066
E9	I	35,242	0.809
E10	B2	11,952	0.274
E11	B2	364	0.008
E12	B1	35,699	0.820
E13	L	45,588	1.041
E14	L	13,494	0.310
E15	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	40,292	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



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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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**

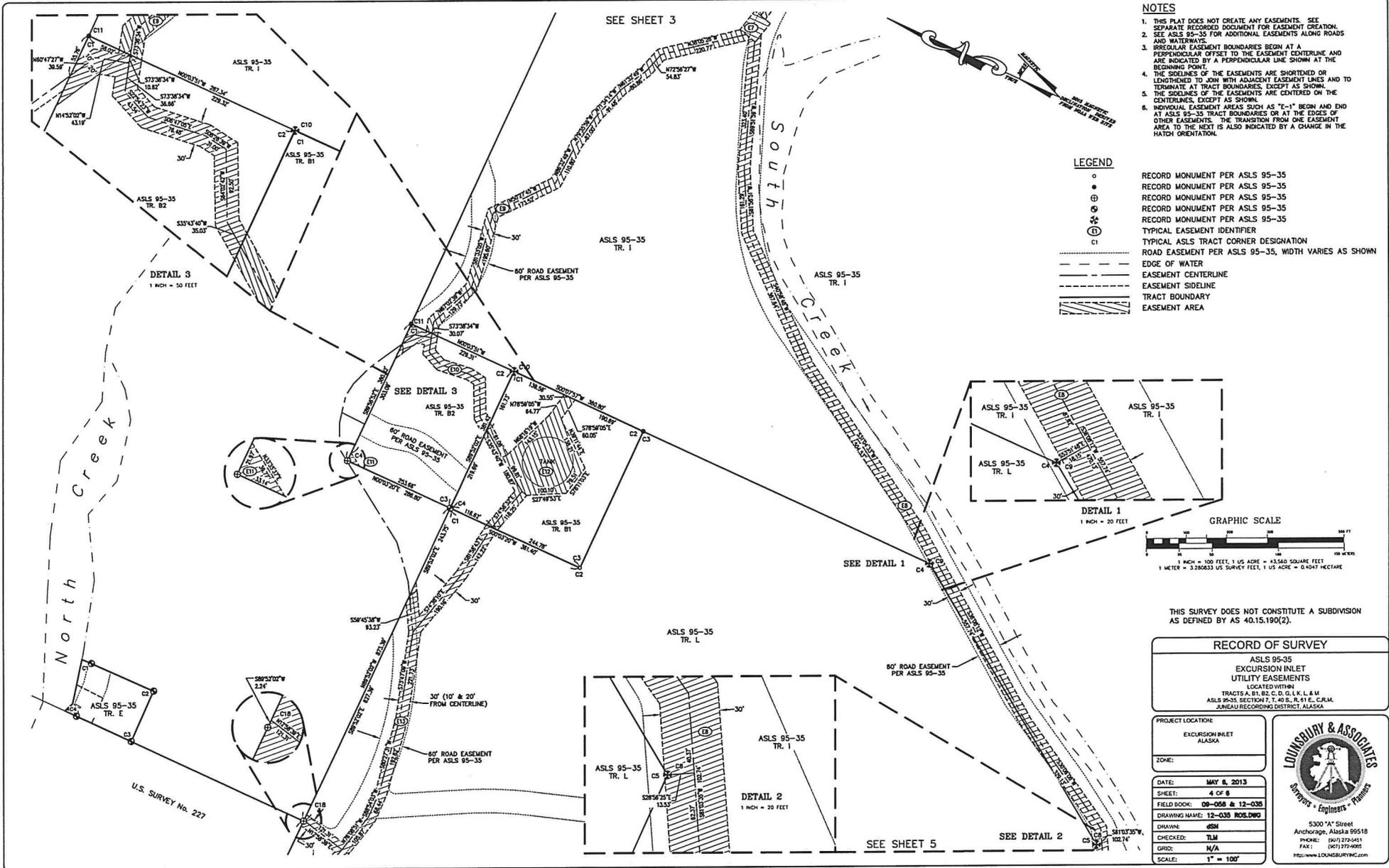
CHECKED: **TLM**

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

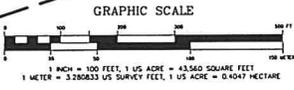


NOTES

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2. SEE ASLS 95-35 FOR ADDITIONAL EASEMENTS ALONG ROADS AND WATERWAYS.
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LEGEND

- RECORD MONUMENT PER ASLS 95-35
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- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊗ RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
- Ⓢ TYPICAL EASEMENT IDENTIFIER
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- ROAD EASEMENT PER ASLS 95-35, WIDTH VARIES AS SHOWN
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- EASEMENT CENTERLINE
- EASEMENT SIDELINE
- TRACT BOUNDARY
- EASEMENT AREA



THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY AS 40.15.190(2).

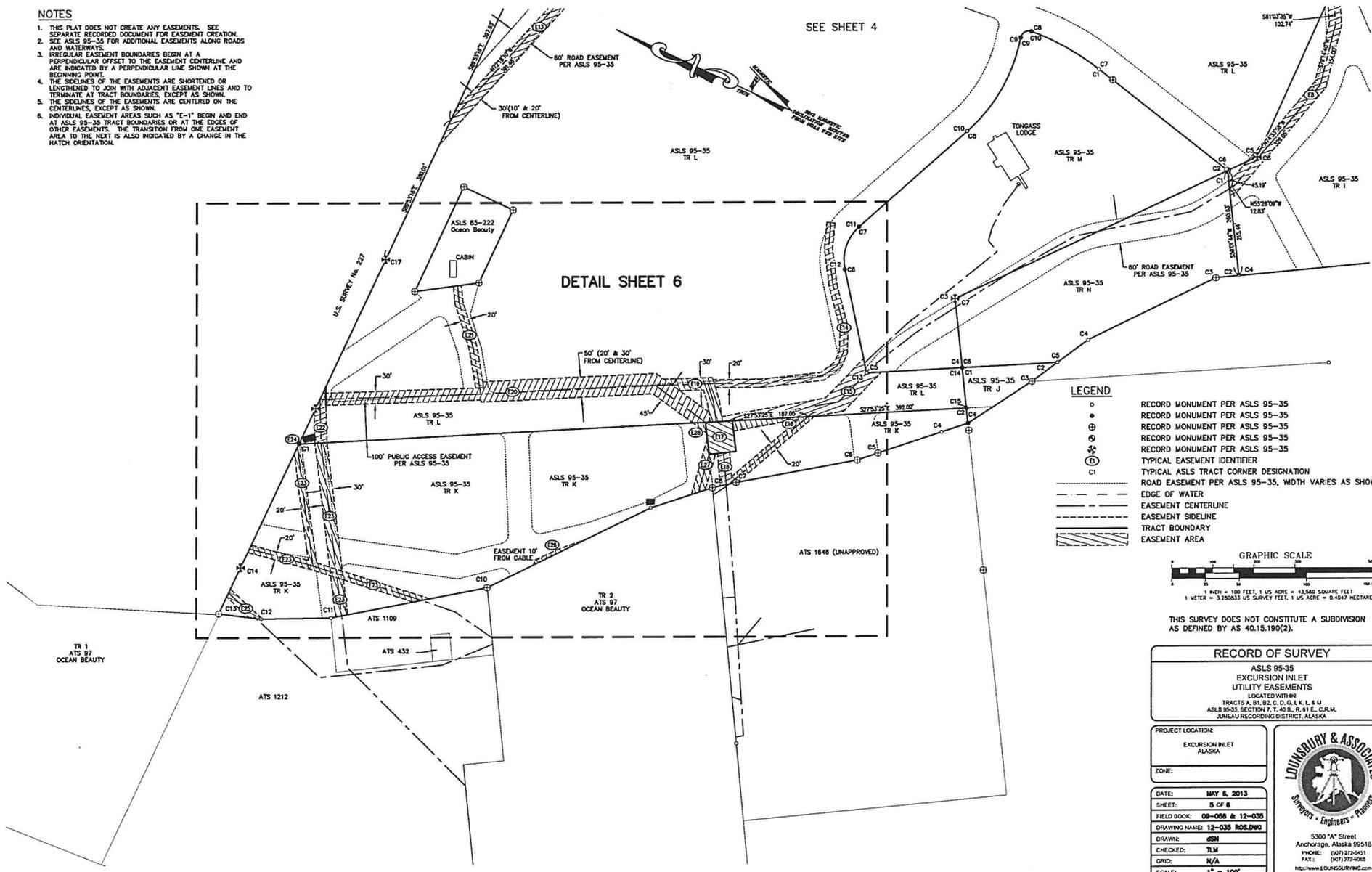
RECORD OF SURVEY	
ASLS 95-35 EXCURSION INLET UTILITY EASEMENTS LOCATED WITHIN TRACTS A, B1, B2, C, D, G, L, K, L & M ASLS 95-35, SECTION 7, T. 40 S., R. 61 E., C. 14M, JUNEAU RECORDING DISTRICT, ALASKA	
PROJECT LOCATION: EXCURSION INLET ALASKA	
DATE: MAY 6, 2013	
SHEET: 4 OF 8	5300 "A" Street Anchorage, 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'	

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
- RECORD MONUMENT PER ASLS 95-35
- ⊕ RECORD MONUMENT PER ASLS 95-35
- ⊙ RECORD MONUMENT PER ASLS 95-35
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- Ⓢ TYPICAL EASEMENT IDENTIFIER
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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: **ASN**
 CHECKED: **TLM**
 GRID: **N/A**
 SCALE: **1" = 100'**

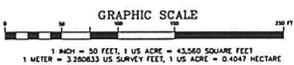
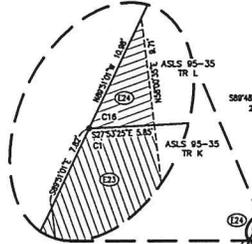
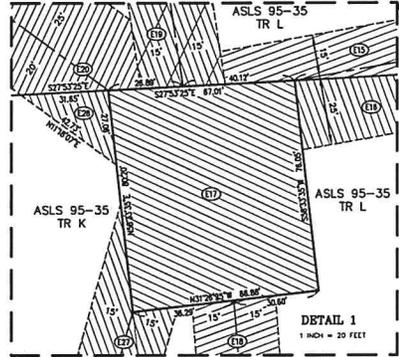
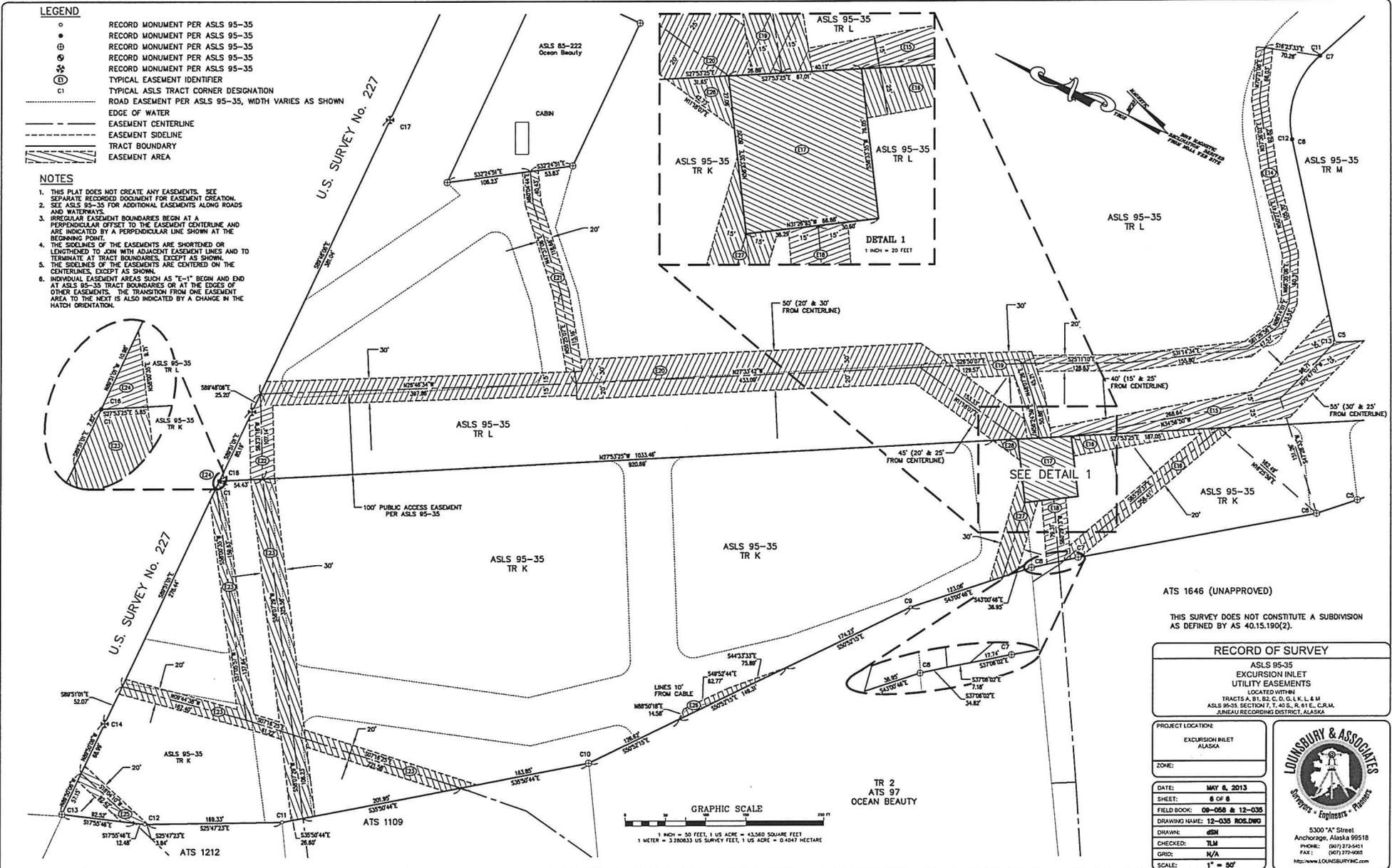
5300 "A" Street
 Anchorage, Alaska 99518
 PHONE: (907) 277-6445
 FAX: (907) 277-0065
 http://www.LOUNSBURYINC.com

LEGEND

- RECORD MONUMENT PER ASLS 95-35
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- ⊙ RECORD MONUMENT PER ASLS 95-35
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- Ⓢ TYPICAL EASEMENT IDENTIFIER
- C1 TYPICAL ASLS TRACT CORNER DESIGNATION
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- - - 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.
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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. 14 M.
 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.DWG
DRAWN:	DM
CHECKED:	TLB
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

9500 PROSPECT DRIVE
ANCHORAGE, ALASKA
USA 99507-5924

ALASKA BAR NO. 7111032
1971

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

October 1, 2013

Statewide Transportation Improvement Program

Attached is a spreadsheet that summarizes proposed Amendment #8 to the existing Alaska Statewide Transportation Improvement Program (STIP) for Federal Fiscal Year (FFY) 2013-2015. The STIP is the state's multi-year program for transportation system preservation and development. It is administered by the Alaska Department of Transportation and Public Facilities (ADOT&PF) and includes interstate, state and some local highways, bridges, ferries and public transportation, but does not include airports or non-ferry-related ports and harbors. It covers all system improvements for which partial or full federal funding is approved and that are expected to take place during the four-year duration of the STIP.

On July 6, 2012, President Obama signed into law P.L. 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21), funding surface transportation programs at over \$105 billion for FFY 2013 and 2014. MAP-21 expands and increases funding for the National Highway System (NHS) program at the expense of Surface Transportation Program (STP) program. The Haines Highway Reconstruction is an NHS project, but the Klehini Bridge Construction is an STP project.

Amendment #8 affects the schedule of several ADOT&PF projects for Haines. The two most significant changes are: (1) HNS Haines Highway Reconstruction MP 3.5-12.2 moved from FFY 13 to "after FFY 15;" and (2) Klehini Bridge Construction moved from FFY 13 to "after FFY 15." This change means that the projects are indefinitely postponed. According to ADOT&PF, the loss of Haines Highway MP 3.5-12.2 project is the result of the delay in the environmental documentation; the ADOT&PF was unable to obligate the \$37,000,000 that was programmed for FFY 13 prior to the end of the federal fiscal year (September 30, 2013), and the funding went elsewhere. The loss of the Klehini Bridge Construction project, according to my contact at the ADOT&PF, was due to the reduction in STP funding at the national level. On a positive note, the Haines Highway Reconstruction is moving forward with many design modifications, and funding for MP 12.2-21 is increased by \$10,000,000 to a total of \$27,000,000. Funding for MP 21-25.3 is unchanged at \$35,950,058 in FFY 14.

Currently, construction bid advertising for the MP 21-25.3 segment is scheduled for 2014, with construction starting in 2015. The MP 12.2-21 segment will likely be ready for advertising in 2015. The 3.5-12.2 segment will be a design-ready, on-the-shelf-project. Project construction funds could be made available for the Haines Highway 12.2-21 project if another NHS project in Alaska experiences a delay in construction.

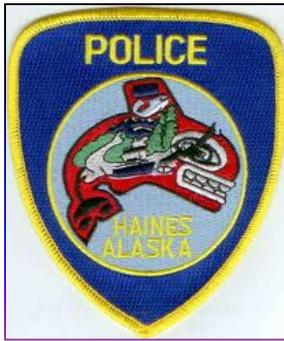
The comment period for STIP Amendment #8 closes October 23, 2013 at 5:00 PM Alaska Time. I am encouraging the Assembly to weigh in on this important issue. The primary reason for supporting the MP 3.5-12.2 segment was for vehicle, pedestrian, and bicycle safety. That is a particularly dangerous part of the highway due to narrow shoulders with guardrails. The loss of funding for the Klehini Bridge replacement and paving improvements is also very disappointing. The Khelini project would replace the old, deteriorating existing bridge with a bridge that meets modern highway design standards. At this time, the only way these projects can stay in the STIP is by bumping another project in its program category in Alaska.

STATEWIDE TRANSPORTATION IMPROVEMETN PLAN (STIP)
Amendment 8 to the 2013-2015 STIP

Project / Phase	STIP w/ Amendment #7 (Approved)			Amendment #8 (Proposed)			Proposed Change/Notes
HNS Highway Reconstruction:							
MP 3.5-25.3	FFY 13	2,925,100	D				
	FFY 14	3,149,800	D	FFY 14	5,074,900	D	
	FFY 15	4,000,000	D	FFY 15	4,000,000	D	
	FFY 15+	0		FFY 15+	0		
		<u>10,074,900</u>			<u>9,074,900</u>		Haines Highway Project Design - project design continuing
MP 3.5 - 12.2	FFY 13	37,000,000	C				
	FFY 14	0		FFY 14	0		
	FFY 15	0		FFY 15	0		
	FFY 15+	0		FFY 15+	37,000,000	C	MP 3.5-12.2 Construction moved from FFY 13 to after FFY 15
		<u>37,000,000</u>			<u>0</u>		Construction postponed indefinitely
MP 12.2 - 21	FFY 13	0					
	FFY 14	0		FFY 14	0		
	FFY 15	17,000,000	C	FFY 15	27,000,000	C	MP 12.2-21 Construction increased \$10.0 million
	FFY 15+	76,882,000	C	FFY 15+	0		No longer included with Am #8
		<u>17,000,000</u>			<u>27,000,000</u>		Construction obligation scheduled 2014/15
MP 21-25.3	FFY 13	0					
	FFY 14	35,950,058	C	FFY 14	35,950,058	C	No Change
	FFY 15	0		FFY 15	0		
	FFY 15+	0		FFY 15+	0		
		<u>35,950,058</u>			<u>35,950,058</u>		Construction obligation scheduled 2014/15
Klehini Bridge Replacement:							
	FFY 13	250,000	D				
	FFY 14	8,315,000	C	FFY 14			
	FFY 15	0		FFY 15			
	FFY 15+	0		FFY 15+	8,565,000	A	Klehini Bridge Construction moved from FFY 13 to after FFY 15
		<u>8,565,000</u>			<u>0</u>		Construction postponed indefinitely

D - Design C - Construction A - All Phases

Note: Projects programmed in the FFY 15+ category (shown in gray) are not federally authorized.



HAINES BOROUGH POLICE DEPARTMENT

**PO BOX 1209
HAINES, AK 99827**

PHONE (907) 766-2121 FAX (907) 766-2190

Interim Chief of Police Simon Ford

October 2, 2013

Police Department Report

PATROL

Our quest for a new police officer continues. Applicants have completed their first stage interviews and psychiatric evaluations. Two candidates will be traveling to Haines later this month to complete the testing process. HBPD officers made five custodial arrests last month; two of them were felony arrests, a DUI and an assault. Sgt. Rettinger is taking a well deserved vacation to visit family in Michigan.

DISPATCH

Dispatch Supervisor Celeste Grimes recently completed the first class of instruction training our other dispatchers to be certified as public safety telecommunicators. The project documents for the upgraded E-911 and Radio installation were posted this week. This was a collaborative effort in which Celeste Grimes, Carlos Jimenez, Barry Begenyi, Julie Cozzi, Michelle Webb, Krista Kielsmeier and Warren Johnson put in many hours of hard work. Developing this project to this point has taken longer than we would have liked, but I am confident that the end result will be excellent and the equipment, installation and training incorporated in the project will be a great value for the Borough.

Activities

- New parking tickets have been ordered and will be arriving this month. We will be making a public service announcement introducing the new citation forms before we begin using them.
- Red Ribbon Week is at the end of October. Officers will be in the classrooms at the school providing information about alcohol and drug use.
- Officer Patterson has done an outstanding job of reorganizing our evidence room since being appointed Evidence Custodian for the department.

Training

Officer Patterson and I attended the Information Collection On Patrol (InCOP) training in Juneau on September 20th. While at the Juneau Police Department for that class, we were given a tour of the facilities there, which will be helpful in contributing to the design of a future public safety building in Haines.



**Haines Borough Police
Department**

Memo



To: Haines Borough Mayor & Assembly
From: Jila Stuart, Chief Financial Officer
Cc: Mark Earnest, Borough Manager
Date: October 3, 2013
Re: FY13 General Fund Financial Report

The attached financial statements show the Haines Borough's general funds' (Areawide and Townsite) actual revenue and expenditures for the fiscal year ending June 30, 2013 as compared with the previous fiscal year and as compared with the FY13 Budget. These figures are currently unaudited and preliminary.

Actual Compared to Budget

In the areawide general fund revenues were \$66,088 (1%) higher than budget primarily due to lodging tax, State of Alaska PERS assistance, and property tax penalty & interest which were higher than budgeted. Areawide expenditures came in \$101,673 under budget primarily due to:

- Payroll expenditures of \$79,767 were under budget due to vacancies and more significantly due to the systems administrator position being filled by a contractor rather than a staff person. This positive budget variance in payroll was offset in part by professional services which were over budget by \$30,561.
- Utilities were under budget by \$48,800. This is mostly due to the pool which was \$41,000 lower than budget. \$24,340 of this was the pool's share of the refund the school district received from AP&T for several years of overbilled electricity. The remainder was due to: lower pool temperatures and increased use of the pool blanket. Fuel usage for the pool was down 22% in FY13 from the previous year.

The higher than expected revenues and lower than expected expenditures for the areawide general fund combined to turn a \$65,397 budgeted surplus into a \$233,157 actual surplus at year end.

Townsite service area general fund revenues were slightly higher than budget (0.5%). Expenditures, however, were significantly lower than budget. Actual expenditures were \$150,068 (8%) lower than budget primarily due to:

- \$49,344 of operating transfers budgeted from the townsite fund to grant and capital project funds for the purchase of equipment did not take place during the year because the purchases did not take place.

- Work orders charged out from the townsite for public works projects were \$43,051 higher than budgeted. This results in lower expenditures for the townsite because labor and materials have been charged to grants or other funds.
- Payroll was under budget \$34,030 due to: lower snowfall, staff vacancies, and turnover in the public works department over the year.

The combination of slightly higher than expected revenues and lower than expected expenditures (which includes delays in the purchase of capital items) results in a \$25,910 loss for the year for the townsite service area fund, rather than the \$184,181 loss which was budgeted.

Year to Year Variance

Areawide revenues were up \$186,000 (4%) in FY13 compared to the previous year. The most significant factor in the increase was a \$205,161 increase in raw fish tax revenues. Areawide expenditures are up \$95,135 (2%) for the year. Payroll expenditures were up \$146,725 (7%) (not including the increase in the State paid PERS on-behalf cost). Increased payroll was mostly due to: the addition of the Executive Assistant to the Manager position, the filling of the Planning & Zoning Tech position in FY13 after having that position empty for much of FY12, and the addition of a part-time assistant in the public facilities department. Increased payroll expense was offset in part by a decreased obligation to the school district (\$187,999 lower in FY13) and by lower utility expenditures primarily at the pool.

Townsite revenues were down \$234,285 (12%) in FY13 primarily due to a decreased mill rate and therefore decreased property tax revenues of \$102,351 and also due to decreased road maintenance funds from Chilkoot Indian Association (\$160,365). Townsite expenditures were up \$155,938 due to an operating transfer in FY13 for the purchase of a dump truck.

HAINES BOROUGH

**GENERAL FUND Preliminary Revenue & Expenditures SUMMARY by FUND
FOR THE FISCAL YEAR ENDING JUNE 30, 2013**

01 AREAWIDE GENERAL FUND

	FY12 ACTUAL	FY13 ACTUAL	Yr to Yr VARIANCE*	FY13 BUDGET	BUDGET VARIANCE*	% OF BGT
REVENUE						
Property Tax Revenue	\$ 1,533,142	\$ 1,606,529	\$ 73,387	\$ 1,605,425	\$ 1,104	100%
Sales Tax	491,958	494,891	2,933	501,000	(6,109)	99%
Sales Tax Lodging	74,736	88,083	13,348	73,000	15,083	121%
State Revenue - Revenue Sharing	678,247	723,327	45,080	722,500	827	100%
State Revenue - Raw Fish Tax	121,651	326,813	205,161	326,812	1	100%
State Revenue - Other	272,283	354,926	82,642	339,775	15,151	104%
Federal Revenue - Secure Schools	377,899	205,595	(172,305)	205,595	(0)	100%
Federal Revenue - P.I.L.T.	364,189	375,243	11,054	375,243	-	100%
Interest Earnings	127,119	93,037	(34,082)	80,000	13,037	116%
Rental Income	63,579	61,603	(1,976)	69,000	(7,397)	89%
User Fees	48,937	42,387	(6,550)	50,000	(7,613)	85%
Penalty & Interest - Property Tax	44,367	48,137	3,770	20,000	28,137	241%
Penalty & Interest - Sales Tax	25,898	29,936	4,038	20,000	9,936	150%
Business Licenses	20,340	12,775	(7,565)	11,000	1,775	116%
Miscellaneous Fines & Fees	28,353	22,157	(6,196)	20,000	2,157	111%
Sale of Fixed Asset	26,738	-	(26,738)	-	-	0%
TOTAL AREAWIDE REVENUES	\$ 4,299,438	\$ 4,485,438	\$ 186,000	\$ 4,419,350	\$ 66,088	101%
EXPENDITURES						
Salaries and wages	\$ 1,413,684	\$ 1,512,098	\$ (98,414)	\$ 1,546,867	\$ 34,769	98%
Employee Burden	655,724	776,481	(120,757)	782,425	5,944	99%
Health Insurance	313,235	327,031	(13,796)	366,085	39,054	89%
Component Unit Reimbursements	(69,132)	(46,371)	(22,762)	(48,162)	(1,791)	96%
Supplies & Postage	23,434	24,921	(1,487)	33,105	8,184	75%
Material & Equipment	36,769	39,473	(2,704)	43,815	4,342	90%
Computers & Peripherals	20,203	16,918	3,285	21,034	4,116	80%
Professional & Contractual	294,136	303,976	(9,841)	273,415	(30,561)	111%
Dues, Subscriptions & Fees	7,232	10,844	(3,611)	7,159	(3,685)	151%
Travel & Per Diem	38,359	30,672	7,687	44,000	13,328	70%
Training	14,516	6,120	8,395	13,400	7,280	46%
Advertising	10,477	9,386	1,091	10,090	704	93%
Banking & Insurance	30,113	30,618	(505)	34,955	4,337	88%
Vehicle Expense	8,503	12,476	(3,974)	12,050	(426)	104%
Utilities	208,571	165,880	42,690	214,680	48,800	77%
School District - Instructional	1,744,865	1,556,866	187,999	1,556,866	-	100%
School District - Activities	210,000	210,000	-	210,000	-	100%
Appropriations from the Assembly	90,417	80,196	10,221	81,858	1,662	98%
Building Maintenance & Repairs	26,829	34,810	(7,981)	41,515	6,705	84%

	FY12 ACTUAL	FY13 ACTUAL	Yr to Yr VARIANCE*	FY13 BUDGET	BUDGET VARIANCE*	% OF BGT
Discretionary Expense	2,698	2,507	191	2,800	293	90%
Work Orders	(115,572)	(158,685)	43,113	(121,475)	37,210	131%
Allocations	(683,446)	(674,265)	(9,181)	(751,029)	(76,764)	90%
Operating Transfers - OUT from General	15,531	120,327	(104,796)	118,500	(1,827)	102%
Operating Transfers - In fr Permanent	(140,000)	(140,000)	-	(140,000)	-	100%
TOTAL AREAWIDE EXPENDITURES	4,157,145	4,252,280	(95,135)	4,353,953	101,673	98%
NET REVENUE OVER EXPENDITURES	\$ 142,293	\$ 233,158	\$ 90,865	\$ 65,397	\$ 167,761	

02 TOWNSITE SERVICE AREA

REVENUE

Property Tax Revenue	\$ 445,434	\$ 343,082	\$ (102,351)	\$ 343,000	\$ 82	100%
Sales Tax	657,171	676,516	19,345	675,000	1,516	100%
Chilkoot Indian Assoc. Road Maintenance	412,684	252,319	(160,365)	250,000	2,319	101%
State Revenue - Public Safety	353,299	353,293	(6)	352,325	968	100%
State Revenue - General	128,702	138,802	10,100	136,000	2,802	102%
Interest Earnings	2,579	2,469	(110)	2,000	469	123%
Miscellaneous Fines & Fees	5,144	4,246	(898)	4,200	46	101%
TOTAL TOWNSITE REVENUES	2,005,013	1,770,728	(234,285)	1,762,525	8,203	100%

EXPENDITURES

Salaries & Wages	499,594	566,094	(66,500)	578,080	11,986	98%
Employee Burden	165,071	176,681	(11,610)	189,949	13,268	93%
Health Insurance	97,961	109,700	(11,739)	118,476	8,776	93%
Supplies & Postage	5,322	5,670	(348)	7,500	1,830	76%
Material & Equipment	134,638	123,484	11,154	112,300	(11,184)	110%
Computers & Peripherals	2,901	803	2,098	2,500	1,697	32%
Professional & Contractual	180,377	157,326	23,052	173,940	16,614	90%
Dues & Subscriptions	1,184	1,295	(111)	1,500	205	86%
Travel & Per Diem	10,971	7,332	3,639	6,450	(882)	114%
Training	995	2,108	(1,113)	1,500	(608)	141%
Advertising	2,500	2,850	(349)	4,350	1,500	66%
Banking & Insurance	18,662	16,409	2,253	19,900	3,491	82%
Vehicle Expense	140,986	116,744	24,242	107,100	(9,644)	109%
Utilities	78,335	80,734	(2,399)	86,340	5,606	94%
Assembly Appropriations	-	-	-	-	-	-
Work Orders	(69,857)	(106,801)	36,944	(63,750)	43,051	168%
Allocations	371,060	370,401	659	385,418	15,017	96%
Operating Transfers - OUT from TSA	-	165,809	(165,809)	215,153	49,344	-
TOTAL TOWNSITE EXPENSES	1,640,700	1,796,638	(155,938)	1,946,706	150,068	92%
NET REVENUE OVER EXPENDITURES	\$ 364,313	\$ (25,910)	\$ (390,223)	\$ (184,181)	\$ 158,271	

*Positive variance is favorable. Negative variance is unfavorable.



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

8D

Facility Administration Report September 2013

Usage: The main event for September was the Alaska Historical Museum Conference, hosted by the Sheldon Museum at the Chilkat Center. 200 attendees took advantage of every room at the Center – including the scene shop and dance studio – for the various workshops and symposiums. The conference was well organized and staffed and apart from a small episode with the ladies toilet, everything went smoothly. (maintenance was right on it after we called).

Haines Arts Council hosted a great band called the *Hot Club of Cowtown* and the Alaska Arts Confluence is back in action with a *Harvest of Arts* evening – all in the same week of the *Museums of Alaska and the Alaska Historical Conference*.

Yoga resumed a more limited class schedule in September but Strongwoman and Morning Muscles are back to normal classes. We anticipate that Yoga will schedule more classes in winter. Jujutsu also teaching a number of classes per week.

Our kitchen renter has finished her season and moved out in September. We also briefly rented the kitchen in the evenings to Rainbow Glacier Tour for food prep. The School has approached the Center to talk about doing a few different events from the school music event to a film night to support sports. Glad to see the school using the center!

Maintenance

- *A ramp to get the snow blower out of the scene shop more easily was set up for the building.
- * The Dance Studio was painted by members of the Advisory board who also put effort into sprucing up the building in anticipation of the conference.
- * Big thanks to Ed and Andus for heroic work in getting our toilets back in working order, patching a hole in one of the basement bathrooms and being as responsive as possible given their workload. Thanks to Carlos for his management of the Facilities. So nice to know we can count on them, thank you.
- *The heat is officially on at the Chilkat Center and is mighty toasty.

Submitted by Facilities Manager, Kay Clements, September 2013

Chilkat Center for the Arts			
9/30/2013			
Contact	Function	Participants	Amount
	Dance Studio		
SEARHC	Yoga	52	90
Chorus Bishop	Seibukan Jujitsu	89	285
Mandy Ramsey	Yoga class	15	15
	Lobby		
SEARHC	Morning Muscles	36	60
St Michael's	Sunday Services	65	375
SEARHC	Strongwoman	45	90
Alaska Arts Confluence	Reception Sept 24	40	75
Haines Arts Council	Hot Club of Cowtown Sept 23	200	325
Sheldon Museum	Convention Package - all rooms Sept 15 - 18	200	1600
	Conference Room		
KHNS	Board meeting	7	n/c
	Auditorium		
	Kitchen		
Sarah J	September	1	250
	SeptemberTotals	750	\$3,165



Memo

Public Facilities

Date: October 8, 2013
To: Mark Earnest, Borough Manager
From: Carlos Jimenez, Director of Public Facilities
Re: Project Update

Borough Radio Communication System and E911

This project has been advertised and the Borough will be receiving sealed bids until 2:00 p.m., Monday, October 21, 2013.

High School Air Handling Unit

95% design documents have been submitted and are under review.

PC Dock and Letnikof Harbor Upgrades

Pacific Pile & Marine have begun demolition of the existing structure at the PC Dock. Work completed to date includes the re-grade of the Approach Dock. The materials barge is scheduled to arrive on October 8, 2013. Pile Driving is scheduled to commence by October 11. This project has a crew of approximately 12 people including four local residents.

Chilkat Lake Road Improvements

Final billing has been submitted for this project. The Borough will retain approximately \$40,000 until the agreed upon changes have been completed, which may be in the summer of 2014.

Highland Estates AC Pipe Replacement

Work on the replacement of the waterline began September 3, 2013 and is progressing well. Currently over 50% of the water line has been replaced. An additional crew was added on October 2 to fall back and commence the final grade work and clean up in areas where the waterline has already been installed.

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.

Harbor Improvements and Upgrades

Projects that are underway or in design are as follows:

- 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

With the exception of Dalton Trail and Riverview RMSA contracts, all of last year's contracts have been renewed.

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.



Agenda Bill No.: 12-177
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Motor Vehicle Registration Tax	1. Manager Recommendation and Report of Towing RFP Results 2. Ordinance 12-10-308 3. Minutes of Previous Discussions
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 9/30/13; Originally 10/15/12	

Full Title/Motion:
Motion: Adopt Ordinance 12-10-308

Administrative Recommendation:
The manager recommends adoption.

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

Comprehensive Plan Consistency Review:	
Comp Plan Policy Nos.: Objective 15I, Page 33	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary Statement:
<p>To offset the costs of junk, abandoned, and impounded vehicles, the Haines Borough may opt into the municipal Motor Vehicle Registration Tax (MVRT) program through the Department of Motor Vehicles (DMV). Haines could expect to receive approximately \$40,000 annually from the program. This ordinance was introduced on 10/23 and the first hearing was 11/6. Following the second hearing on 11/27, the assembly postponed it to the 12/11 meeting when it was amended. Following discussion, the assembly postponed the matter until after a towing RFP had been issued and proposals reviewed. Staff is ready to present the information. The manager recommends ordinance adoption.</p>

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): 11/6, 11/27/12
Meeting Date(s): 10/23, 11/6, 27, 12/11/12, 10/8/13	Tabled to Date:



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

October 8, 2013

Motor Vehicle Registration Tax

I am recommending the adoption of the Motor Vehicle Registration Tax (MVRT) ordinance establishing a special revenue fund to help offset costs associated with abandoned and impounded vehicles in the Haines Borough. The Assembly previously considered Ordinance No. 12-10-308 establishing a vehicle impoundment and retirement program fund and levying a motor vehicle registration tax. On December 11, 2012, the Assembly adopted a motion to postpone the ordinance until after an RFP had been issued seeking proposals from private interests to perform abandoned and impounded vehicle services. The Borough issued an RFP to provide towing and impoundment services and received no responsive bids from the private sector.

Adoption of a flat tax of \$22 every other year would generate approximately \$40,000 annually based on an estimated 4,200 registered vehicles in the Haines Borough and payment of an 8 percent administrative fee to the Alaska Department of Administration, Division of Motor Vehicles. The funds would be used in the short term to purchase a tow truck, create a secure impound yard, and cover administrative costs. A junk vehicle disposal program will be a longer term goal.

Adoption of this ordinance before January 1, 2014 will initiate the MVRT for the 2015 registration cycle. The Borough may choose to forward fund the program and have a tow truck and impound yard in place for the 2013-2014 winter.

Plan:

The revenue can be used to fund the purchase of a tow truck and create a small impound yard at the old city shop. The Borough can also train drivers, purchase insurance and detail a towing protocol for Public Works. It is estimated that the purchase of a used tow truck will be \$25,000. The portable fencing is estimated at \$5,000. A security camera is estimated at \$1,500 to purchase and install. The tow truck and impound lot insurance is estimated at \$2,700 annually. The total cost is estimated at \$34,200.

In the long term the Borough may work towards a junk vehicle retirement plan that would include a larger impound yard, equipment to drain and store fluids, etc.

Trial Period:

After one registration cycle or two full years of operation, the new program can be reevaluated and fees can be adjusted or removed if warranted. In Juneau, excess funds are used to cover the cost of hazardous material disposal. This services cost the City and Borough of Juneau about \$12,000 per year.

Communities that have adopted an MVRT include the following: Anchorage, Bethel, Bristol Bay, Cordova, Dillingham, Juneau, Kenai, Ketchikan, Kodiak, Matanuska, Nenana, Nome, Petersburg, Sitka, Unalaska, and Whittier.

Existing Haines Borough Code:

Vehicles currently abandoned on Borough property and creating a safety hazard will be moved by Borough staff.

Abandoned Vehicles are defined in Haines Borough Code as one that is:

- A. Left unattended within 10 feet of the roadway in excess of 48 hours;
- B. Left unattended on private property in excess of 24 hours without written permission from the owner of the property; or
- C. Left on public property without consent of the manager for more than 30 days

10.44.010 Parking during snow removal

It shall be unlawful for any person to park any vehicle or to allow any vehicle owned or under the person's control to continue to be parked on any public street during the time, day or night, that snow removal from such street is reasonably necessary for the movement of vehicular traffic without leaving in charge of such vehicle a person authorized, competent, and able to remove such vehicle. Falling snow, the presence of unremoved snow on such street, or the conduct of snow removal operations will be sufficient to indicate this prohibition. Any vehicle found parked during such periods on a public street where such snow removal is reasonably necessary may be removed by the chief of police or persons under the chief's control and such vehicle shall be impounded until the cost of such removal shall have been paid to the borough or to the person removing the vehicle at the direction of the chief of police or other persons under the chief's supervision and control. Any such charge remaining unpaid shall constitute a lien against said vehicle and shall be collectible in the same manner as personal property taxes. Fine/Bail: \$25.00. (Ord. 07-08-167)

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE TITLE 3 TO ESTABLISH A VEHICLE IMPOUNDMENT AND RETIREMENT PROGRAM FUND, TO LEVY A MOTOR VEHICLE REGISTRATION TAX, AND TO EXEMPT FROM PROPERTY TAXES ALL VEHICLES SUBJECT TO THE REGISTRATION TAX.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. Sections 5, 6, and 7 of this ordinance are of a general and permanent nature and shall become a part of the Haines Borough Code. Sections 4 and 8 of this ordinance shall not be codified.

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. Section 8 of this ordinance shall be effective upon adoption. All other sections shall be effective on January 1, 2014.

Section 4. Rationale for Legislation.

A. Vehicles that are subject to impoundment must be removed and stored in a safe and secure manner.

B. Vehicles that have exhausted their useful life must be disposed of in a manner that ensures against threats to the environment, reclaims resources that may be reused, and is financially feasible.

C. Environmental issues associated with the improper disposal or abandonment of vehicles often fall to local governments to address.

D. The cost of tracking down the owners of abandoned and junked vehicles to require them to pay the costs of disposal has not proven economical.

E. It is reasonable to require vehicle owners to participate in paying the costs of properly disposing of and recycling parts of retired vehicles, rather than using general tax revenues.

F. The State of Alaska allows local governments to levy taxes on motor vehicle registrations collected by the state, with an eight percent administrative fee.

G. State law requires that boroughs give notice of election to come under the state motor vehicle registration program by January 1st of the year before the tax goes into effect.

H. Vehicles subject to motor vehicle registration tax are exempted by state law from municipal personal property tax, and therefore, non-commercial trailers identified under AS 28.10.421(b)(6) are expressly excluded from participating in the Haines Borough Vehicle Impoundment and Retirement Program.

I. The state motor vehicle registration program includes exemptions such as senior citizens, disabled persons, and certain military personnel.

Section 5. Amendment of Title 3. Title 3 of the Haines Borough Code is hereby amended by the addition of a new chapter 3.46 titled "Vehicle Impoundment and Retirement Program Fund" to read as follows:

Chapter 3.46

VEHICLE IMPOUNDMENT AND RETIREMENT PROGRAM FUND.

Sections:

3.46.010 Policy and intent.

3.46.020 Allocation.

3.46.030 Management

3.45.040 Investment policy

3.46.010 Policy and intent.

The intent of this chapter is to provide for the proper accounting and management of public funds derived from the motor vehicle registration tax established by Chapter 3.85 of the Haines Borough Code of Ordinances and AS 28.10.431.

3.46.020 Purpose.

There is established a separate fund entitled the "Vehicle Impoundment and Retirement Program Fund." All proceeds derived by the borough from the motor vehicle registration tax shall be deposited in said fund and used for the impoundment and the responsible disposal of retired and abandoned vehicles within the borough.

3.46.030 Management.

The borough chief fiscal officer is designated as the official with the responsibility for managing the moneys received and disbursed by the Vehicle Impoundment and Retirement Program Fund and as directed by the assembly.

3.46.040 Investment policy.

Investment policy is set forth in Chapter 3.08 HBC.

Section 6. Amendment of Section 03.70.040(A). Haines Borough Code 03.70.040(A) is amended, to read as follows:

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

3.70.040 Local exemptions and exclusions.

A. The following property is exempt from general taxation:

1. Business inventory and items held for resale;
2. ~~Personal motor vehicles.~~ **All motor vehicles which are subject to the Motor Vehicle Registration Tax described in Chapter 03.85.**

Section 7. Amendment of Title 3. Title 3 of the Haines Borough Code is hereby amended by the addition of a new chapter 3.85 titled "Motor Vehicle Registration Tax" to read as follows:

Chapter 3.85

MOTOR VEHICLE REGISTRATION TAX.

Sections:

3.85.010 Levy of Motor Vehicle Registration Tax.

3.85.020 Allocation.

3.85.010 Levy of Motor Vehicle Registration Tax.

A. There is levied a biennial motor vehicle registration tax within the borough pursuant to the provisions of AS 28.10.431 and as such statute may be hereafter amended, revised or replaced. The rate of said tax shall be flat and established by resolution of the Haines Borough Assembly. The categories under

"Type" are intended to coincide with the categories provided in AS 28.10.431(b), as now enacted or as may be hereinafter amended.

B. The annual motor vehicle tax on commercial vehicles that are registered annually is one-half the rate of the biennial tax.

MOTOR VEHICLE TAX SCHEDULE

BIENNIAL SCHEDULE Tax:

<u>VEHICLE TYPE</u>	<u>RATE</u>
<u>(1) Motorcycle</u>	<u>\$22</u>
<u>(2) Passenger (AS 28.10.421(b)(1)): non-commercial passenger vehicles, motor homes, and low speed vehicles; taxicabs</u>	<u>\$22</u>
<u>(3) Commercial (AS 28.10.421(c)(1-4))</u>	
<u>5,000 pounds or less</u>	<u>\$22</u>
<u>5001-12,000 pounds</u>	<u>\$22</u>
<u>12,001 - 18,000 pounds</u>	<u>\$22</u>
<u>18,001 pounds or over</u>	<u>\$22</u>
<u>(4) Commercial motor bus (AS 28.10.421(b)(4)): motor buses with a seating capacity for 20 or more persons and used exclusively for commercial purposes in transporting of visitors or tourists</u>	<u>\$22</u>
<u>(5) Non-commercial pickup/van (AS 28.10.421(b)(2): less than 10,000 pounds and not registered to a company or business</u>	<u>\$22</u>
<u>(6) amateur mobile radio station vehicles (AS 28.10.421(d)(8))</u>	<u>\$22</u>
<u>(7) vehicles eligible for dealer plates (AS 28.10.421(d)(9))</u>	<u>\$22</u>

3.85.020 Allocation.

Subject to assembly appropriations, all of the money received by the borough under this section and AS 28.10.431, and as such statute may hereafter be amended, revised or replaced, shall be deposited in the Vehicle Impoundment and Retirement Program Fund established in Chapter 3.46 of the Haines Borough Code of Ordinances.

Section 8. Notice. The Manager shall give notice to the State of Alaska pursuant to AS 28.10.431 that the Haines Borough has elected to levy this tax.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS _____ DAY OF _____, 2012.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 10/23/12
Date of First Public Hearing: 11/06/12
Date of Second Public Hearing: 11/27/12 – Adoption Postponed
Postponed until after RFP is issued & proposals reviewed 12/11/12

Mark Earnest

From: Michelle Webb
Sent: Wednesday, Oct 10, 2012 9:09 AM
To: Mark Earnest
Subject: MVRT Stuff
Attachments: ORD_12-10-308



9 AM
e 3 DMV Tax.doc; 8A1 - MVRT 1.pdf

**Haines Borough
Borough Assembly Meeting #237
December 11, 2012
MINUTES**

Approved

.....
A. Borough Manager – 12/11/12
.....

1. Public- or Private-Sector Option?

The manager presented two program options for dealing with impounded and abandoned vehicles, and, the assembly was asked to decide which option would be preferred in the event Ordinance 12-10-308 was adopted.

SCHNABEL said a lot of people contacted her to express opposition to the motor vehicle tax. She had been a proponent, but enough people have said to her that the borough should be enforcing its own code. What's missing is an RFP to pull it all together to make it happen. **SCOTT** said the packet contains a memo from her that the towing service tool has not been provided to our enforcement staff. She would like to see a motion that directs the manager to issue an RFP for towing services to remove the vehicles from the streets. **BERRY** appreciates the work and believes in the private sector. He asked about the \$25 fine in code. **LOWE** explained it is a fine/ticket in addition to any towing costs. **VICK** said the borough did previously have a contract and he's not sure it was a satisfactory one because of exorbitant fees. He asked what happens if there are no feasible private sector proposals. **SCHNABEL** said the borough needs to come up with a "fair" fee. It should be a give and take solution. The borough has to be able to support the fees being charged to get the needed job done. If the borough doesn't get an acceptable price, we can keep working at it until we get what we need. When we are clear that we'll enforce our ordinances, it will enable a contractor to work with the borough in good faith. She remembers years ago when people were towed all the time, and we have to get back there and fix whatever broke down. **SMITH** suggested maybe the borough should add \$25,000 to the Police Department budget to be used for towing. **SCOTT** said there has to be a mechanism for the towing unless they go out and buy their own tow truck.

Motion: **SCHNABEL** moved to "direct the manager to advertise an RFP that will enable the government to enforce its laws," and it was amended to insert a colon (:) followed by the text *1) towed and impounded vehicles, 2) abandoned vehicles, and 3) junk vehicles.* The motion, as amended, carried unanimously.
.....

D. UNFINISHED BUSINESS

A. Ordinance 12-10-308

An Ordinance of the Haines Borough Assembly amending Haines Borough Code Title 3 to establish a Vehicle Retirement Program Fund, to levy a motor vehicle registration tax, and to exempt from property taxes all vehicles subject to the registration tax.

This was introduced on 10/23 and the first hearing was 11/6. Following the second hearing on 11/27, the assembly postponed it to this meeting with the following motions on the table. Discussion resumed at the primary amendment level.

Main Motion: "Adopt Ordinance 12-10-308."

Primary Amendment #1: "Include impoundment vehicles in the ordinance by incorporating the amendments proposed in the November 27, 2012 document prepared by the borough manager."

Secondary Amendment: **LAPP** moved to "replace with the substitute ordinance prepared by the borough clerk," and it carried 4-1 with **SMITH** opposed.

The amended primary amendment motion carried 4-1 with **SMITH** opposed.

During the discussion, **BERRY** said he believes it is premature to tax the residents. The request for proposals (RFP) should be tried first. **SCHNABEL** spoke against this because the language encourages an attitude that the public's dollar can be counted on to pay for what a private person should be responsible for. Also, Title 8 already makes it clear that cost recovery is an individual's the responsibility. **EARNEST** said in the case of many abandoned vehicles, there is no way to track down the owner. Sometimes the vehicle identification number is obliterated or there is trouble tracking down and collecting. There are people who behave irresponsibly and the borough is left to deal with and pay for the mess. The process of tracking down the last registered owner can be administratively time-consuming. **LOWE** said he is as frustrated as anyone about the towing situation. The police department does not have the tools to enforce the code. The borough could get the cost recovery, but the first thing to do is issue an RFP to find a company capable of towing the vehicles. **SCOTT** said common sense tells us there are enforcement costs, and they are not always recovered from the culprit. **VICK** asked if costs outside of cost recovery from the owner still make this ordinance necessary. **EARNEST** said the borough doesn't know what a proposal will consist of, what components will be included, or what the fees will be. There could be a large gap between the proposal and the assembly's determination of a reasonable fee. As an arbitrary, hypothetical example, if someone runs out of gas and is towed, and the fee is \$1,200, is that appropriate or fair?

Motion to Postpone: **VICK** moved to postpone until after the RFP is issued and there has been time to review the proposals," and the motion carried unanimously.

VICK explained this postponement may help to eliminate some of the speculation about what might be needed and answer some of the questions.

Thank you.

Michelle L. Webb

Deputy Clerk

Haines Borough

P.O. Box 1209

Haines, AK 99827

P: (907) 766-2231 ext. 36

F: (907) 766-2716

This e-mail and responses to this email are subject to provisions of the Alaska Statutes and may be made available to the public upon request.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-357

Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Contract for Assessment Services for the current FY14 year	1. Resolution 13-10-500 2. Recommended Proposal from Alaska Assessment Assistance
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 9/30/13	

Full Title/Motion:
Motion: Adopt Resolution 13-10-500.

Administrative Recommendation:
The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 50,000	\$ 55,875	\$

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 received three proposals in response to the recent Request for Proposals (RFP) for contract assessment services for the current fiscal year. The deadline for submitting proposals was September 4, 2013. The plan, as previously reported, is to transition to a full-time, staff Land Assessor by July 1, 2014. The proposals were reviewed and ranked by staff, and the assembly is asked to award the contract to Alaska Assessment Assistance (Don "Marty" McGee).

Proposals were also received from:
Alaska Assessment Services (James Canary) and
Horan & Company (Charles Horan)

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-10-500

Draft

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to enter into a professional services agreement with Alaska Assessment Assistance to provide tax assessing and staff training services for Fiscal Year 2014 for an amount not to exceed \$50,000.

WHEREAS, Haines Borough Code 2.38.040 requires that “[t]here shall be an assessor (or firm with responsible party named by said firm) who shall be appointed by the manager and provided with a job description and responsibilities”; and

WHEREAS, the Borough solicited proposals from qualified firms to provide tax assessing services; and

WHEREAS, the Borough received three proposals in response to the Request for Proposals (RFP); and

WHEREAS, the Borough administrative review team including the Assistant Assessor recommends award to Alaska Assessment Assistance; and

WHEREAS, the proposed fee is within the FY14 budgeted amount for the proposed scope of services,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to enter into a professional services agreement with Alaska Assessment Assistance to provide tax assessing and staff training services for Fiscal Year 2014 for an amount not to exceed \$50,000.

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

Alaska Assessment Assistance

A Proposal for Assessment Services Haines Borough, Alaska

October 1

2013

Prepared by: Don Martin McGee, Owner

October 1, 2013

Julie Cozzi, Borough Clerk
Phone: 907 766-2231
Fax: 907 766-2716
E-mail : jcozzi@haines.ak.us
Borough Clerk's Office
Haines Borough
P.O. Box 1209
Haines, Alaska 99827

Re: RFP for Contract Assessment year 2014.

Proposer: Alaska Assessment Assistance, Don M. (Marty) McGee
Alaska Business License #994113
Address: 4812 Sundi Drive, Anchorage Alaska, 99502
Phone: 907-306-9007
E-mail: 39mcgee@gmail.com

Dear Ms. Cozzi,

The following revised proposal is for Ad Valorem property tax assessment and consulting services regarding the administration of property tax and the organization and training of full time borough staff. This is a revised and reduced scope of work recognizing the budgetary limitations of the 2013 fiscal year.

The emphasis will be on training and organizing the Borough staff. The specific goals will be: completion of the 2014 tax roll, capturing new construction, correcting existing property description, and completion of the previously established re-inspection cycle.

The major difference in this proposal and the prior proposal is that less time will be spent by Alaska Assessment Assistance staff in the community. This anticipates a shift to more time spent working with the staff to be done remotely via teleconference and e-mail. Less time will be spent inspecting property prior to the completion of the 2014 tax roll. Work on the re-inspection is anticipated to continue into early summer of 2014.

Thank you for the opportunity to respond to your recent request for proposal.

If you have any additional questions please call me.

Sincerely,

Alaska Assessment Assistance

Don M. (Marty) McGee, Owner

I. Scope of Work:

Assess all taxable real property within the limits of the Borough in the name of the person by whom it is owned, at its full and true value (fair market value) as of January 1 of the tax year, according to Alaska Statutes 29.45.110 and Chapter 3.72 of the Haines Borough Code, including real property of senior citizens and disabled veterans pursuant to AS 29.45.030(e), as well as preparing the assessment roll, reviewing protests filed by property owners, and representing the Borough before the Borough's Board of Equalization.

II. Proposer Qualifications:

Don M (Marty) McGee is the primary responder to this request for proposal. Please see the attached resume for the complete professional qualifications. I am a recognized professional in property tax assessment. I am active in, and recognized by, the Alaska Assessors Association as well as the International Association of Assessing Offices. For a number of years I have been an instructor of appraisal and assessment administration with the IAAO and am a past president and current board member of AAAO.

I was the assessor for the Municipality of Anchorage for the past 13 years. The MOA tax base includes more than 90,000 real property tax parcels and requires an average of 15,000 individual property inspections each year. Both the valuation and the inspection and description process must be conducted in a uniform and consistent manner in order to accomplish a fair and equitable tax base in accord with the standards and cannons of both the IAAO and AAAO.

As the assessor for the Municipality of Anchorage, I was responsible for all administrative, technical, and public relations work for the assessment division. He was directly involved in the development, specification, calibration and maintenance of models for mass appraisal of commercial and residential real property as well as taxable personal property. Also, all job descriptions, organizational structure and policies and procedures for the assessment of property tax were developed under my direction.

I have special knowledge of the administration of property tax exemptions under AS 29.45 and have worked directly in the interpretation and development of the current laws associated with exemption from taxation. Also, in the past ten years I have worked on the development of administrative records related to property tax exemptions for the Municipality of Anchorage.

In the past two years I developed an RFP for a replacement CAMA system and has performed an exhaustive review and evaluation of proposals related to CAMA systems for the Municipality of Anchorage. This review process involved a group of professionals, including the fields of: electronic technology, geographic information systems, public utility special assessment, tax collection, and government accounting and property tax administration.

In prior years I was responsible for the re-engineering of the appeal management and hearing process in Anchorage. These changes were in response to direction from the Superior Court of Alaska. The

changes included: changes to the Municipal code, policies and procedures of the appeals board, policies and procedures for the assessment staff, and training for both the appeal board and the assessment staff. This work required outreach to the community and close work with the assembly. As a result the administrative cost of appeals work was cut in half and the volume of appeals was reduced from 3,000 per year to 700 per year. These changes were accomplished while developing a high degree of community confidence in the fairness of the assessment system.

I also designed and implemented a significant change to the calculation and administration of Possessory Interest property for the Municipality of Anchorage. This change came in response to a precedential Fairbanks court decision regarding the valuation of this type of property. In many cases these changes resulted in a doubling of value in a single year. The changes were made in order to avoid legal challenges to the fairness of the tax system. Implementation of these changes required direct contact with property owners, the community and with the Assembly.

Alaska Assessment Assistance is a new company and has been under development in the summer of 2013. In the performance of this contract I intend to hire or associate with at least three other key individuals. As a condition of this proposal I intend to use the services of these individuals or others of equal professional experience and knowledge. Mr. William Westover is a General Certified Appraiser with the State of Alaska. He has been employed in property tax assessment with the Municipality of Alaska for the prior 14 years. He has experience with both residential and commercial real property. He is skilled in the development of mass appraisal models, the description of property, the inspection of property and electronic data systems used for mass appraisal. Mr. Richard Kinney is recently retired from the Municipality of Anchorage. He worked for the Municipality of Anchorage for the past 15 years and is skilled in the inspection and description of real property as well as the resolution of property tax appeals. Ms. Darcel McGee has worked in customer service and the management of small businesses for the past 25 years as well as data entry and electronic data systems.

These individuals are employees and not subcontractors. They have committed to this project and to the newly formed business entity. In the past five years these individuals (with the exception of Ms. McGee) have been full time employees of the Municipality of Anchorage. As MOA employees, under the direction of Mr. McGee, these individuals have addressed tasks as defined in this RFP and have accomplished goals similar to those stated in this RFP.

This defines the qualifications of the core team and the core competencies which will be focused on the specific tasks included in the RFP. This core team will be supplemented by additional human and technical resources needed as the identified tasks are addressed and strategies are developed in cooperation with borough management and the desires of the community. Developing the ability of the current full time borough employees to independently administer the property tax assessment is a clearly identified goal of this request for proposal. All members of the core team are committed to accomplishing this goal. Adequate qualifications of the borough support personnel are an essential component of this proposal.

It is a specific assumption of this proposal that the current borough assessment staff will remain engaged in the collection of information, updating of records and development of the assessment system during the contract. The primary method of teaching will be to work side by side with the acting assessor in the performance of all tasks. The core team is committed to work with the acting assessor, inform him regarding how the work is done and collaborate with him in the development of work plans and prioritization of work to be performed. All estimates of time spent on work to be performed are predicated on a full time local employee as a component of the team. In addition to the acting assessor it is assumed that borough clerical staff is responsible for updating the ownership records and legal descriptions of taxable real property. It is the intention of this proposer to work with the clerical staff with regard to how this information is collected and how it is stored in a searchable electronic data base.

III. Specific Project Tasks:

- a) The Contract Assessor shall establish the full and true value of all taxable real property located within the Haines Borough to be assessed in the name of the person by whom it is owned on the first day of January each year of the contract.

The proposer intends to develop and certify the tax roll for the 2014 tax year with the assistance of borough employees and data systems.

- b) The Contract Assessor shall provide current assessments with new photographs and valuations for all new buildings constructed and assess all changes on existing properties.

The proposer will identify needed inspections and record updates with the goal of a minimum of 300 inspections based on priorities developed with the acting assessor.

- c) The Contract Assessor shall establish the full and true value of each possessory interest in properties and exempt entity leases to others on an annual basis.

The proposer will review the process, records and methods used to develop possessory interest. Using the available data collected by the borough staff the proposer will set and defend values on property leased from governmental owners in accordance with AS 29.45.

- d) The Contract Assessor shall present a plan for updating property cards for each parcel in the Borough showing size, dimensions, construction materials, and other pertinent data as well as a minimum of one exterior photograph.

The proposer will develop the indicated plan and implement the first phase of updating descriptive information and incorporating the information into the valuation process.

- e) The Contract Assessor shall provide updates to the assessment roll to the Borough Clerk's office no later than March 1st each year of the contract.

The proposer agrees.

- f) The Contract Assessor shall represent the Haines Borough at Board of Equalization hearings.

The proposer agrees.

- g) The Contract Assessor shall conduct a sales ratio analysis (ratio between assessed values and sales prices) to ensure that current appraisals are within 90% to 110% of market value.

The proposer agrees; however the dispersion of the final work product will be dependent on the quantity and quality of available market data and may vary from the limits stated as is consistent with IAAO standards.

- h) The Contract Assessor shall keep the Borough Administration informed of sales ratio analyses or other information which may cause the assessor to make changes to local assessments that would raise or lower assessments greater than 5% in any one year.

The proposer agrees.

- i) The Contract Assessor shall be accessible to Haines Borough staff throughout the term of the contract for consultation.

The proposer intends that "accessible" means available via telephone or e-mail during most work days and typical work hours of 9:00 AM to 6:00 PM.

- j) The Contract Assessor, after completion of the Board of Equalization hearings, shall assist the Borough Clerk in certifying the final assessment roll.

The proposer agrees.

- k) The Contract Assessor must be accessible to the borough staff throughout the tax year to assist with correcting problems that may arise out of the assessment work.

The proposer agrees and intends that "accessible" means via telephone or e-mail during normal work hours.

- l) The Contract Assessor shall assist the Borough in preparing an annual report for the State Assessor.

The proposer agrees. The proposer intends that "assist" means that the proposer is not the primary author of the annual report and will provide information and guidance to the acting assessor as the primary author of the report.

- m) Assist staff in migrating paper property cards to a digital electronic format and in implementing a computer assisted mass appraisal system.

A primary assumption of this proposal is that the borough does not have an integrated computer assisted mass appraisal system (CAMA). Development or implementation of such a system is outside of the scope of this agreement.

The proposer intends to work with borough staff to migrate the existing property description information into an electronic data base. All work done by the proposer in collecting information will be done with a mind toward migrating information into a fully developed CAMA system. The proposer intends to be collecting and organizing data including building sketches, photographs, maps, market data, and descriptive data in electronic digital format which can be converted and integrated into a fully developed CAMA system if and when the Borough chooses to implement such a system.

- n) Provide training to Borough Assistant Assessor and staff.

The intended method of training the Borough staff is to work side by side in a collaborative and cooperative manner. All members of the core team are dedicated to explaining, demonstrating, and documenting the work to be performed. The team will advise and assist the Borough staff in the development of an assessment manual to document policies and work practices. This proposer does not intend to perform class room type training with any Borough staff as part of this agreement.

- o) All work, paperwork, valuation models, calibration schedules and any other item used to set values, are to become the property of the borough.

The proposer agrees.

IV. Complete Review:

The proposer shall provide a detailed plan for the reassessment of all real property within the Borough, including a timeline for accomplishing this task.

This proposer is aware of the two audits performed by the State Assessor of the Haines tax roll. One conclusion of those audits is that the tax roll was in such a condition that it could not be determined if the values were in compliance with IAAO standards with regard to level of assessment or dispersion of value. Based on those reports I believe that there are approximately 2,478 parcels of taxable real property and of these 1,223 are improved property. A 4 year re-inspection cycle is mandated indicating a need for about 620 inspections each year. It is indicated that the historic rate of inspections is less than 620 in prior years and that there are questions regarding the accuracy of property descriptions with regard to inspections performed in prior years. There is also concern with regard to equity and accuracy as a result of past valuation modeling practices. I intend to work with the acting assessor to prioritize what property needs to be inspected and how the inspection process will work as the first order of business.

I believe great progress can be made in a single year in establishing assessment models and administrative practices which place the existing permanent staff on a good foundation for independent operation in future years. I have not done an in-depth review of the assessment record or any specific review and evaluation of the mass appraisal models currently in use. Based on the information contained in the State Audit I do not believe that all of the problems with the description of property or the calibration of valuations models can be solved before the end of 2013. Based on my experience in working with community's and individual tax payers I anticipate that it is not in the best interest of the community to attempt to make all of the indicated changes to the tax roll in a single year. I have worked in many small communities and areas with limited market data. I believe that the laws of the State of Alaska do not require that all indicated changes be made in a single year. I also believe that some market trends can be studied for several years to determine a solid basis for significant changes. It is my belief that assessment is a continuous multi-year process where the tax base evolves with the economic changes of the community.

This proposal is predicated on certain specific assumptions. The assessment process is a multi-year process. Each year an assessed value is issued on all identified taxable property based on the ownership and property description information contained in the assessment record. State law and regulation require all property ownership and description information recorded with the State of Alaska to be included in the annual assessment. Similar laws and regulations require that the property description be reviewed and updated not less than once every six years. It is not anticipated that every parcel of taxable property is physically inspected and the entire assessment record is updated in one year. Many physical changes to property are not part of the public record and are unknown to the assessment staff until the property is inspected in detail or disclosures are made by the property owner.

It is anticipated that available market data is collected, analysis is performed and valuations are updated on every single property every year using statistical analysis and mass appraisal techniques. Alaska is a non-disclosure State. As a result it is not possible or legally required that every market transaction is disclosed and known to the assessor each year.

The first step in the process will be to review the available assessment records and work with the existing full time staff to identify what property is the highest priority to inspect and update records.

It is anticipated that borough staff has current records regarding changes to ownership and changes to legal description (deeds and subdivisions) as well as current records on the leases of property from governmental agencies (possessory Interest property). My expectation is that borough staff will continue to update this information to year end.

At the same time a review of the existing categorization of property and the valuation models associated with different categories of property will be conducted. Model specification and calibration must be done at the same time as evaluation of the accuracy consistency and reliability of the descriptive data.

Performing these two tasks will identify what changes needed to be made in the current year and what changes are feasible to be accomplished in the current year prior to issuance of the notice of value and role certification. Another consideration will be at what rate the community can accommodate change and how much time and effort will be required to explain the change to the community. It is anticipated that the Borough management, the assembly, and the community will be informed of needed changes, in that order and as soon as the need for change is identified by the contractor.

If the contract is concluded by mid-September evaluation of available information can begin within one week. Field work can begin before the end of September and potentially be completed prior to the end of October. The contractor and key team members reside in Anchorage. It is anticipated that a significant amount of the evaluation and modeling can be done remotely from Anchorage. It is also intended that regular weekly consultation, communication and exchange of information with the permanent borough employees in Haines through the entire assessment process via telephone, e-mail and post. It is anticipated that the proposer will have a significant physical presence in Haines for three to four weeks in September and October(as allowed by weather conditions).

The conversion of data from physical "paper records" to an electronic data base can begin immediately upon execution of the contract. In order to avoid a duplication of effort and the introduction of bad data into the system, those properties identified for inspection in the current year will be scheduled for the last part of the data entry project.

It is the proposer's current understanding that there is not sufficient data available to perform a reliable ratio study to use as a basis for model specification and calibration. This step is normally the beginning of the annual valuation process and is performed several times during the year prior to the finalization of the tax roll. Because of our experience in model building and real estate economics we can begin segmenting the market and model specification before a ratio study is performed. As we improve the quality of the available data we will perform a base line ratio study as soon as reliable and consistent data is available. We intend to use valuation models based on the cost approach. The first step in this approach is to establish a land value. The second step is the establishment of improvement value and the final step is total property value. The sales comparison approach and the income approach will be utilized as a tool for the calibration of value. The income approach is valuable only for property whose value is predicated on rent from the property. Individual property sales and listings will be used to establish benchmarks of value for property with similar characteristics and market acceptance. Similarly information on the actual construction cost or estimated replacement cost from a cost manual will be used to establish benchmarks regarding buildings and other improvements. It is anticipated

that current full time assessment staff is part of the team performing this work and will be educated and informed about the methods and techniques used by the contractor as the work is performed. In general this work is done using excel work sheets and these work sheets will be shared with the borough staff as they are developed and utilized.

V. Borough Provided Services:

The Borough shall supply the assessor with the existing tax roll (including legal descriptions, maps, plats, building permit applications, ownership records, addresses, etc.), access to existing assessment cards (to be maintained by Haines Borough), and office space and a phone while working on site in Haines.

The proposer requests the use of two Borough vehicles including fuel and maintenance for use during September and October. The proposer also requests internet access be provided by the Borough. The proposer intends to take possession of the property record cards and existing data base (or an electronic version of this information) for the purposes of converting this information into a systematic electronic data base usable in the valuation process. With these provisions the proposer accepts.

It will be the responsibility of the Haines Borough to mail assessment notices and tax bills to property owners, and prepare newspaper notices as required by the Haines Borough Code. It will be the responsibility of Haines Borough to ensure that those appealing assessments to the Board of Equalization, do so on appropriate forms, and to validate properly filed appeals.

The proposer agrees.

The Borough anticipates providing staff support to the Contract Assessor.

The proposer agrees.

VI. Staff Training Requirements:

The proposer shall identify any training needs that may be required for borough staff in the use of any technology, products or services the prospective assessor may employ for this project.

The proposer agrees and will provide this information to the acting assessor and the Borough Manager in written form on a monthly progress report.

VII. Compensation:

Proposers shall express their fee for the tax year of this proposed contract in a fee schedule to include all labor, materials, transportation costs, meals, lodging, and Board of Equalization expenses. A final scope of work and not-to-exceed fee will be negotiated after the top-ranked firm has been tentatively selected. If the negotiations with top-ranked firm are not satisfactory to the Borough, the Borough reserves the right to terminate negotiations and commence negotiations with the second-ranked firm, and so on.

If it should become necessary for the Haines Borough to request the Contract Assessor to render any additional services to either supplement the services requested in the RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the Haines Borough and the firm.

Fee Schedule:

Contract Assessor:	\$100 per hour
Modeling expert:	\$75 per hour
Senior appraiser:	\$50 per hour
Property inspector:	\$40 per hour
Clerical and data entry	\$40 per hour

Record update includes: site visit, sketch, photo, and inspection.

Property record update in city	\$60 per residential record
Property record update outside city	\$100 per residential record
Property record update commercial property inside city	\$200 per record

Transportation cost air round trip from Anchorage \$820 per person.

Daily food allowance \$40 per person.

Lodging \$160 per day per person.

Car Rental \$90 per day per car.

Tax roll preparation includes: needed inspections and record updates (300 inspections anticipated, market data collection and analysis and market model calibration, exemption review and record update.

2,478 taxable parcels \$20.18 per parcel \$50,000.00

VIII. Incurred Costs:

The Borough is not liable for any costs incurred by the proposer prior to issuance of an approved contract. All costs incurred as a result of responding to this RFP are the sole responsibility of the proposer.

Proposer agrees.

IX. Additional Considerations:

During the evaluation process, the Haines Borough reserves the right, where it may serve the Borough's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

Proposer agrees.

X. Rejection of Proposals:

The Borough reserves the right to: 1) reject any or all proposals; 2) accept the proposal which in its judgment best suits the needs of the Borough; 3) waive any and all irregularities or informalities in any proposal.

Proposer agrees.

Don Martin McGee
4812 Sundi Dr.
Anchorage, AK 99502
(907) 243-6893 (Home)
(907) 306-9007 (cell)

Professional manager with experience in public sector and private sector enterprises primarily associated with real estate.

I am a dynamic self starter with an entrepreneurial background. I am very comfortable taking initiative, identifying areas for business improvement, and developing and executing plans for organizational change. I am comfortable dealing with all segments of society from State legislators to local government officials to the owners of mobile homes and very small businesses. My experience as the Municipal assessor has given me the opportunity to have direct dealings with all segments of society in the State of Alaska. I have learned to deal with confrontation and conflict on a daily basis and manage those situations to successful conclusions where all parties usually walk away feeling they have received fair treatment.

My work experience has been varied. Early in my career I was a small construction contractor and worked in that field up to being a commercial property owner, manager, builder and real estate developer. The economic collapse of the mid 1980's caused me to go into public service. Within government I have taken the initiative to identify and implement significant changes in the Assessment system of the Municipality Of Anchorage. These changes have included organizational changes, cultural changes and legal changes. The organizational changes included redefinition of all job descriptions, replacement of all subordinate managers and redefinition of the relationships between managers and employees. The cultural changes mean moving from a process with no time constraints and little attention to customer satisfaction, to a business rigidly bound to time constraints and significantly focused on customer satisfaction. These changes have been accomplished inside a government bureaucracy with unionized employees. Changes to Municipal Code and State law were required and I lead the legislative process for that change. My most significant accomplishment has been a reengineering of the appeal hearing process. Included in the appeal hearing process change was the replacement of the members of a volunteer citizen panel of hearing officers.

I am comfortable with public speaking in both formal and informal settings. Each year I frequently testify to the State Legislature as well as the Anchorage Assembly on property tax matters. I also make over 40 public speaking appearances addressing groups such the Chamber of Commerce, local clubs and associations, Community Councils, and local neighborhood groups. As an instructor for the IAAO I teach two classes in appraisal and assessment each year.

I have worked my entire career in the real estate industry in some fashion. I have significant knowledge of real estate ownership and title. I have owned, managed and developed both commercial and residential real estate in the Anchorage, Kenai, and Mat-Su boroughs. As the Assessor the determination of the owner of record, and a complete understanding of the bundle of rights, is an absolute requirement and daily activity. This area of knowledge includes issues related to access easements and both the surface and subsurface estate. I have specific knowledge related to the ownership of property rights in the State of Alaska. I deal daily with aspects of Native American property ownership and ownership issues prior to Statehood and after Statehood. I have conducted title research in the federal records as related to pre-statehood original title. My family owned property which was homesteaded prior to the territory of Alaska and I have been the executor of estates where title research had to be done back to those original patents.

As a private real estate appraiser I have written full narrative appraisals on pipeline corridors across native owned lands in the Cook Inlet area. I have written appraisals on all kinds of commercial and residential real estate all over the state from Bristol Bay to the Kenai Peninsula, Matanuska Borough and Anchorage Borough. As an active member and leader of the Alaska Association of Assessing Officers I have discussed and been directly involved in real property issues in all areas of the State.

As the Chairman of the State Assessment Review Board I have conducted week long hearings on petroleum exploration and production equipment in all areas of the State including the North Slope and Cook Inlet. As a hearing officer I have heard testimony on rights of way, easements, drilling pads and off shore platforms. I have heard testimony from engineers, geologists, economists, scientists, appraisers and legal experts. Included in these hearings has been the 800 mile Trans Alaska Pipeline System. All property assessed under AS 43.56 is based on the value of the remaining proven reserves. Therefore, a significant amount of testimony and argument goes into defining and measuring the proven reserves as well as the ability to get that oil to market (access, easements and rights of way). These access issues include ownership interests of the government, Native American organizations and private individuals.

PROFESSIONAL EXPERIENCE

Chief administrator for property tax assessment, Municipality of Anchorage, Property Appraisal, Anchorage, AK 1999 – 2013

- Assessment for tax base of 114,500 real and personal property taxable parcels and \$31,000,000,000 in value
- Manage staff of 52 individuals
- Coordinator of division wide strategic change management and reorganization efforts.
- Responsible for annual division budget of \$5.39 million, including goal setting, auditing and review.
- Facilitator of all human resource functions including; process development, implementation and audit.
- Accountable for property exemption program, audit functions and process improvement initiatives.

State Assessment Review Board (hearing officer) 2007 to 2013

Chair of SARB 2009 to 2013

Appeal hearing board for the State of Alaska on oil and gas related property including the Trans Alaska Pipeline.

Real Property Appraiser, Municipality of Anchorage, Property Appraisal, Anchorage, AK. 1998 – 1999

- General appraisal of commercial real property for property tax assessment.

Real Property Appraiser, Erickson and Associates, Anchorage, AK. 1993 – 1997

- Author of full narrative appraisals under direct review of MAI appraiser.

Licensed Real Estate Agent, Sleeper Realty Broker, Anchorage, AK. 1990 – 1993

- Worked both commercial and residential real property.
- **Mat-Su gravel producers Association (President)** 1984
- Founding member of this association dealing with community and political issues associated with major gravel mine development in the Mat-Su Borough and Anchorage.
- Developed a major gravel mine near Palmer.

Real Property Developer and Builder, Alaska Development Corp., Anchorage, AK 1984 – 1990

- Land subdivision and residential construction and design. Worked in Naknek, King Salmon, Soldotna, Homer, Wasilla, and Anchorage Alaska.
- Self employed general manager of firm.
- Owned and managed, industrial, residential and commercial real property.

EDUCATION

MSRE, Master of Science Real Estate, University of Alaska Anchorage 1982

- General Business Management with emphasis on Real Estate.

BBA, Bachelor of Business Administration, University of Alaska, Anchorage 1980

- Emphasis in Real Estate management, development and appraisal.
- Engineering classes at UAA in both undergraduate and graduate level in both design and engineering management.

Appraisal Institute, numerous courses 1980 to 2008

International Association of Assessing Officers, numerous courses 1999 to 2011

National Judicial College, Reno Nevada

- Administrative law: Fair Hearing 2009

PROFESSIONAL ASSOCIATION

Certified in-state instructor with International Association of Assessing Officers current

Course 312 Commercial Modeling Concepts

Course 400 Assessment Administration

Course 401 Tax Policy

Course 300 Fundamentals of Mass Appraisal

Course 101 Real property Appraisal

Course 102 Income Approach to Valuation

Course 112 Advanced Income Approach to Valuation (updated in September 2008)

Instructor for Course 400 Anchorage AK November 2010

Instructor for Course 112 Anchorage AK December 2008

Instructor for Course 300 Fairbanks AK October 2006

Instructor for Course 300 Wasilla AK November 2006

Course 101 update Milwaukee WI September 2006

Instructor Course 102 Anchorage AK October 2005

Instructor Course 101 Anchorage AK August 2004

Instructor Training Workshop Honolulu HI July 2003

Co chair of Local host committee for annual conference of International Association of Assessing Officers in Anchorage (approximately 2,000 attendees, one week)

2005

President of Alaska Association of Assessing Officers

2004

Board member of AAAO

2010 to 2013

COMMUNITY WORK

Community Council committee chairman, Sand Lake CC, Anchorage, AK

1984

REFERENCES

Steve Van Sant, State Assessor for Alaska

Phone: 907-269-4605

E-mail: steve-vasant@dced.state.ak.us

Wayne Haerer Jr, (Former Assessor for the Municipality Of Anchorage)

Phone: 907-350-9797

E-mail: whaerer@gci.com

Ronald Brown Assessor for the Ketchikan Gateway Borough

Phone: 907-228-6653

E-mail: ronb@kgbak.us

Sharron Weddleton CFO Calista Corp.

(Formerly CFO Municipality Of Anchorage)

Phone: 907-868-2427

E-mail: sweddleton@calistacorp.com

Robert Erickson MAI, Erickson and Associates

Phone: 907-274-8691

E-mail: Erickson@asc.net

Rick Richter MAI, Richter & Stone

Phone: 907-248-1499

E-mail: ricston@alaska.net

Chip Twomey, Tesoro Companies Director of property tax

Phone: 210-626-6544

E-mail: ttwomey@tsocorp.com

Sorren Orley (former CFO for Anchorage and Vice Chancellor for UAA) Professor of Accounting at UAA

Phone: 907-786-1448

E-mail: anseo@uaa.edu

STATEMENTS ABOUT APPROACH TO ASSESSMENT

You asked for some of my thoughts about assessment and how I would approach the task in Haines. In general I view assessment as an integral part local government and the local fiscal process. I am a practitioner of an open public process. I believe it is important to get information to the mayor, assembly and finance director in a timely manner. Surprises are bad for everyone and the day the valuation notice is mailed is not the time to find out about big changes. My approach is to keep an open dialog with the community with the government officials informed first and information to the public second.

My past experience tells me that if things are explained to the taxpayers the community can accept changes and even agree that the change improves the fairness of the tax system. As an assessment professional my primary goal is fair treatment of all taxpayers. The other thing I have learned is that property owners are much more aware of assessment inequities than we realize. This often helps with the acceptance of change.

I am very comfortable with working with your existing staff and working toward their independent ability to maintain and modify the assessment system. I will need to review the existing data and how it is used to establish and defend value before I will be able to comment on how much work is needed or a time table for completion of the work.

My education and experience is in both the technical side and the administrative side of assessment. I have just completed a multi-year review of computerized assessment systems. I also was directly involved in the creation and calibration of mass appraisal models for both land and improved property. My experience is that this kind of work usually leads to a more stable and predictable tax roll as the assessed value changes from year to year.

I look forward to meeting and talking with you in the near future.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-358
Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Contract for Assessment Services for the current FY14 year	1. Resolution 13-10-501 2. Memo from the Manager and CFO 3. Recommended Proposal from Caselle
Originator: Chief Financial Officer	
Originating Department: Finance	
Date Submitted: 9/30/13	

Full Title/Motion:
Motion: Adopt Resolution 13-10-501.

Administrative Recommendation:
The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 23,000	\$ 30,000	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
Haines Borough is in need of replacing its property tax billing software. The Borough already uses the Caselle accounting suite for its other accounting functions and there are significant benefits to having a single, integrated system of accounting software. The assembly in its FY09 budget appropriated \$159,000 from the Capital Improvement Project fund for accounting software, servers, and networking hardware, and there is a \$30,000 balance remaining.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-10-501

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Caselle, Inc. in the amount of \$23,000 for the purchase and installation of Caselle's Property Tax Collection module.

WHEREAS, the Haines Borough is in need of replacing its property tax billing software; and

WHEREAS, Caselle, Inc. has provided a quote of \$23,000 for the purchase and installation of their property tax billing module; and

WHEREAS, the Borough already uses the Caselle accounting suite for its other accounting functions and there are significant benefits in having a single, integrated system of accounting software; and

WHEREAS, the Haines Borough Assembly in its FY09 budget appropriated \$159,000 from the Capital Improvement Project fund for accounting software, servers, and networking hardware; and

WHEREAS, \$30,000 of that appropriation is remaining and available for use; and

WHEREAS, the Borough's Chief Fiscal Officer and Borough Manager recommend the purchase,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to contract with Caselle, Inc. in the amount of \$23,000 for the purchase and installation of Caselle's Property Tax Collection module.

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

Memo



To: Haines Borough Mayor & Assembly
From: Jila Stuart, Chief Financial Officer
Mark Earnest, Borough Manager
Date: October 1, 2013
Re: Purchase of Caselle Property Tax Module

Background

The Haines Borough is currently using a custom MS Access database for property tax collection which was developed for the Haines Borough in the 1990s. This system is antiquated and is in need of replacement. In FY09 when the Borough's accounting software was upgraded from Fundware to Caselle funds were budgeted for upgrading the property tax billing module as well. At that time, however, Caselle didn't offer a property tax billing module and the Borough decided to hold off on converting the property tax system. Over the last year Caselle has developed a property tax billing module which has received good reviews. We believe now is a good time to purchase the module and make the conversion. ***The current Access database has the following short comings:***

1. **It is not a multi-user system** - Only one user can access the data. Purchase of a new system would allow anyone in the finance office to help property tax customers when the primary property tax collector is unavailable.
2. **Data is not as secure as it should be** - Data can be overwritten easily if a user is not careful or is unfamiliar with the system.
3. **Reporting is poor** - Reports are set up to print to a track feed printer and would need to be reworked in order to print to a laser printer. Many reports can only be created at a certain point in time and cannot be created later. Reports are complex and we would need to hire a consultant to make modifications.
4. **Not integrated with the rest of the accounting software suite** – additional data entry is currently required to enter property tax payment information into the Caselle general ledger. Purchase of the Caselle module will reduce data entry.
5. **Training/Support/Documentation** – There is no support or training and very little documentation available for the custom access database.

Proposed Solution

A fee proposal from Caselle for purchase and installation of their property tax module is attached. \$30,000 is available from the FY09 appropriation for accounting software. Purchase and installation will cost \$23,000 plus \$4,000/year for software maintenance and support. There is a huge advantage in having all of the accounting functions: payroll, accounts payable, utility billing, general ledger, sales tax, and property tax billing in one software suite. It reduces data entry and it reduces system administration problems which result from trying to integrate two separate pieces of software created by different manufacturers.



Caselle® Clarity Software & Services Proposal

for

Haines Borough, AK

October 1, 2013

(Valid for 90 days)

From:

Wade Walker, Territory Manager
pww@caselle.com

Caselle® Clarity Software & Services Proposal
Haines Borough, AK
October 1, 2013

Proposal Summary

Total Software License	\$20,000
Total Training	1,500
Total Setup	1,500
Total Investment	\$23,000

Software Maintenance & Support will increase by \$333 per month.

Proposal Detail

<i>Caselle</i> ® Clarity Application Software	License Fees	Training	Setup	Total
Property Tax Collection	\$20,000	\$1,500	\$1,500	\$23,000
Two (2) Additional Concurrent User Licenses (7 Total)	Incl.	-	-	Incl.
Grand Total	\$20,000	\$1,500	\$1,500	\$23,000

Note: Conversion will be on a per bid basis upon review of existing legacy data.

Property Tax Collection Setup

- Set up tax entities, land codes, tax codes, personal property types and periods.
- Format forms for valuation notice, tax statement, personal property affidavit, tax coupons and delinquent notice.
- Create a “Checklist” to document Property Tax procedures.





Agenda Bill No.: 13-351
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Haines Rail Access Assessment	1. Resolution 13-10-502 2. Manager Report 3. Rail Study Scope and Proposal
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 9/2/13	

Full Title/Motion:
 Motion: Adopt Resolution 13-10-502.

Administrative Recommendation:
 The borough manager recommends adoption.

Fiscal Impact:

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

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.: Objective 4E, Page 17 of Action Summary	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
 The ADOT&PF is interested in funding the rail access assessment project, and has offered grant funding to the borough for this purpose. The proposed study would expand on the Alaska Canada Rail Link (ACRL) Feasibility Study prepared by ALCAN/PROLOG. The fee proposal is in the amount of \$86,800. On 9/10/13, the assembly passed a motion directing 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. This resolution will authorize the manager to sign grant and other agreement documents.

Referral:

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

Assembly Action:

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

A Resolution of the Haines Borough Assembly authorizing the Manager to enter into a Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities to conduct the Haines Rail Assess Pre-Feasibility Study, accepting grant funds in the amount of up to \$100,000 from the ADOT&PF for expenses incurred in the conduct of the Study, and authorizing the Manager to enter into a sole-source contract with ALCAN RaiLink/PROLOG Canada to perform the Study.

WHEREAS, the Borough Assembly is the governing body of the Haines Borough; and

WHEREAS, ALCAN RaiLink/PROLOG Canada (ALCAN/PROLOG) submitted a proposal titled "A Preliminary Assessment for Rail Access to the Port of Haines" to the Haines Port Development Council; and

WHEREAS, to the Haines Port Development Council requested support for the project from the Alaska Department of Transportation and Public Facilities (ADOT&PF) to conduct the study; and

WHEREAS, the ADOT&PF is authorized to enter into agreements with municipalities to plan, design, and construct transportation facilities pursuant to AS 44.42.020; and

WHEREAS, the Borough is a municipality established under Alaska law; and

WHEREAS, the grant funds have been appropriated for the Haines Rail Access Pre-Feasibility Study; and

WHEREAS, the ADOT&PF has offered to provide grant funding to the Haines Borough for the Haines Rail Access Pre-Feasibility Study; and

WHEREAS, the proposed Haines Rail Access Pre-Feasibility Study is consistent with Objective 4e of the Haines 2025 Comprehensive Plan which states: *Pro-actively address possibility of railroad between Port Lutak area, the Yukon Territory and Interior Alaska*; and

WHEREAS, ALCAN RaiLink was incorporated to conduct the Alaska Canada Rail Link (ACRL) Feasibility Study, which was completed in 2007 and remains the most comprehensive evaluation of northern rail infrastructure investment, and since that time, a number of additional infrastructure investment studies have been completed under ALCAN RaiLink, including the *Yukon Short Track Report* and the *Canol Resource Corridor Study*; and

WHEREAS, the Haines Rail Access Pre-Feasibility Study would expand and update the ALCAN/PROLOG ACRL Study where it specifically covers what was designated as the *Haines Rail Benchmark*; and

WHEREAS, in addition to their work on the ACRL and related studies, ALCAN/PROLOG is a leading consulting group with much experience in multi-modal railway, highway, aviation, marine and pipeline transportation experience, including infrastructure planning, transportation policy development, freight and passenger market analysis, economic impact assessment, modal traffic forecasting, intermodal systems analysis, and regional distribution economics; and

Haines Borough
Resolution No. 13-10-502
Page 2 of 2

WHEREAS, the Manager believes that sufficient justification exists under Haines Borough Code - exceptions to competitive sealed bidding and submission of quotations, subsection 3.60.170(c) "where the borough's requirements can be met solely by an article or process obtainable only from a single source," to award a sole-source contract with ALCAN/PROLOG for the proposed Haines Rail Access Pre-Feasibility Study,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly hereby authorizes the Manager to enter into a Memorandum of Agreement with the Alaska Department of Transportation and Public Facilities to conduct the Haines Rail Assess Pre-Feasibility Study, accepts grant funds in the amount of up to \$100,000 from the ADOT&PF for expenses incurred in the conduct of the Study, and authorizes the Manager to enter into a sole-source contract with ALCAN RaiLink/PROLOG Canada to perform the Study.

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

Stephanie Scott, Mayor

Attest:

Julie Cozzi, MMC, Borough Clerk



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

September 10, 2013

Haines Rail Access Assessment

Attached is a copy of proposal titled: "A Preliminary Assessment for Rail Access to the Port of Haines," submitted by ALCAN RaiLink/PROLOG Canada¹ (ALCAN/PROLOG) to the Haines Port Development Council. The proposed Haines Rail Access Study would expand on the Alaska Canada Rail Link (ACRL) Feasibility Study prepared by ALCAN/PROLOG. The ACRL Study was a \$5 million effort funded by the State of Alaska and the Government of Yukon; the ACRL Phase 1 Feasibility Study considered a rail connection through Alaska, Yukon and Northern B.C. linking North Pacific Rim markets in the shortest trade corridor between North Asia and North America, via a U.S. port. ALCAN/PROLOG has proposed to expand on their earlier work following the same format as the ACRL to complete a comprehensive business case assessment from both a private and public sector perspective rail access to Haines.

The Alaska Department of Transportation and Public Facilities (ADOT&PF) is interested in funding the rail access assessment project, and they have offered to provide grant funding to the Haines Borough for this purpose. The fee proposal submitted by ALCAN/PROLOG is in the amount of \$86,800. I have been informed that the ADOT&PF supports increasing the budget and grant amount to cover additional project expenses such as the cost of conducting public meetings. What will be needed for the project to go forward as envisioned is a grant agreement between the Borough and ADOT&PF and a budget amendment to accept and expend the funds.

This project is consistent with Objective 4e of the Haines 2025 Comprehensive Plan which states: *Pro-actively address possibility of railroad between Port Lutak area, the Yukon Territory and Interior Alaska* (the content of which is reproduced on page 2 of this report). Should the Assembly wish to proceed with this project, I am recommending a sole source contract with ALCAN/PROLOG for the Haines Rail Access Study. They are uniquely qualified for the proposed work. ALCAN RaiLink was incorporated to conduct the ACRL study, which was completed in 2007 and remains the most comprehensive evaluation of northern rail infrastructure investment. Since that time, a number of additional infrastructure investment studies have been completed under ALCAN RaiLink, including the *Yukon Short Track Report* and the *Canol Resource Corridor Study*. The proposed Haines Rail Access Study is to update the ACRL Study where it specifically covers what was designated as the *Haines Rail Benchmark*. ALCAN/PROLOG Principals and Associates provide a broad background of multi-modal railway, highway, aviation, marine and pipeline transportation experience, including infrastructure planning, transportation policy development, freight and passenger market analysis, economic impact assessment, modal traffic forecasting, intermodal systems analysis, and regional distribution economics.

Recommended Motion: 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.

¹ALCAN RaiLink is a Whitehorse, Yukon based company also doing business as PROLOG Project Logistics Yukon and is affiliated with PROLOG Canada Inc. based in Calgary, Alberta

Strategies	Timeframe			Responsibility
	1-2	3-5	6-10+	
Objective 4E: Pro-actively address possibility of railroad between Port Lutak area, the Yukon Territory and Interior Alaska.				
1. Identify land and resource concerns, at a planning level, along the three routes that being discussed as options to identify issues important to the Borough that a future engineering or environmental study would need to address.	X	X		Borough
2. Identify the route likely to be preferred (at a planning level) by Haines Borough and rationale.		X		Borough
3. Survey route from Lutak to Zimovia Point (just past 9 mile) where a possible bridge would be built, to assess costs and feasibility so that Borough is positioned to assist State, Yukon Government, or other potential funders. This could be partially combined with action 4D (1).		X	X	Borough, Yukon Government, producers/private sector, ADOT&PF
4. Conduct preliminary engineering study to estimate construction costs and exit point for 3-mile tunnel from Lutak Dock to airport area for alternative truck or railroad route to Lutak Dock.		X		Borough, Yukon Government, producers/private sector, ADOT&PF

Source: ACTION SUMMARY – Haines Borough 2025 Comprehensive Plan / September 2012, page 17.

APPENDIX A
SCOPE OF SERVICE
A PRELIMINARY ASSESSMENT FOR RAIL ACCESS
TO THE PORT OF HAINES, ALASKA

Contents

1. Action by Borough Staff 1

2. Introduction to the Contractor's Scope of Work.....2

2. Work Structure 9

3. Approach 4

3.1 Private Sector Assessment 11

3.2 Public Sector Assessment..... 12

3.3 Integrated Investment Analysis 12

3.4 Haines Consultation 13

1. Action by Borough Staff

The Haines Borough Manager will direct staff to engage a consultant to perform the work shown below. The consulting contract will incorporate and be based on the cost estimate shown in Attachment 1 to this Appendix and Scope of Service. The consulting contract will incorporate the *Alaska Canada Rail Link Study* (ACRL Study), which was completed in 2007, and the consultant will build upon the ACRL Study. A summary report from that study is incorporated herein as Attachment 2. The proposed Haines Rail Access Pre-Feasibility Study will update the ACRL Study specifically as it relates to the *Haines Rail Benchmark*.

2. Introduction to the Contractor’s Scope of Work

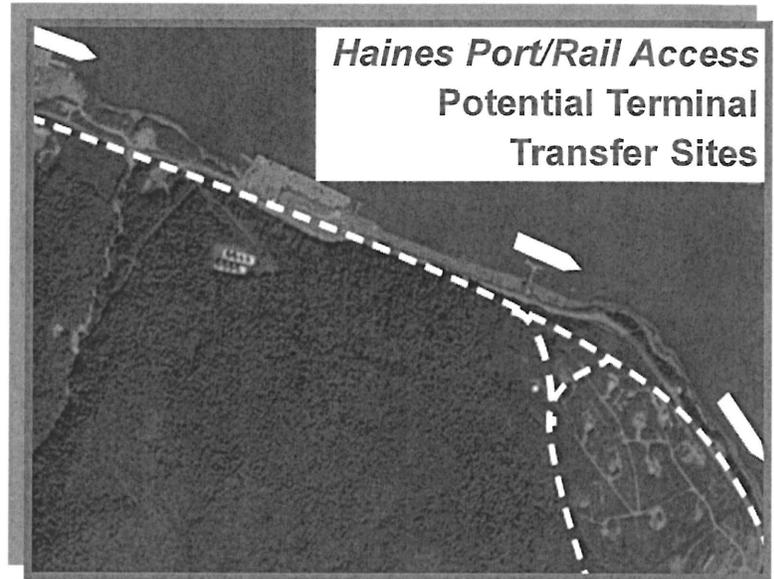
Haines, Alaska, is in the unique position of having a well-protected, deep water port with substantial upland area(s) potentially available to support high volume rail operations that may be required to fully develop resources in the Yukon Territory and neighboring areas.

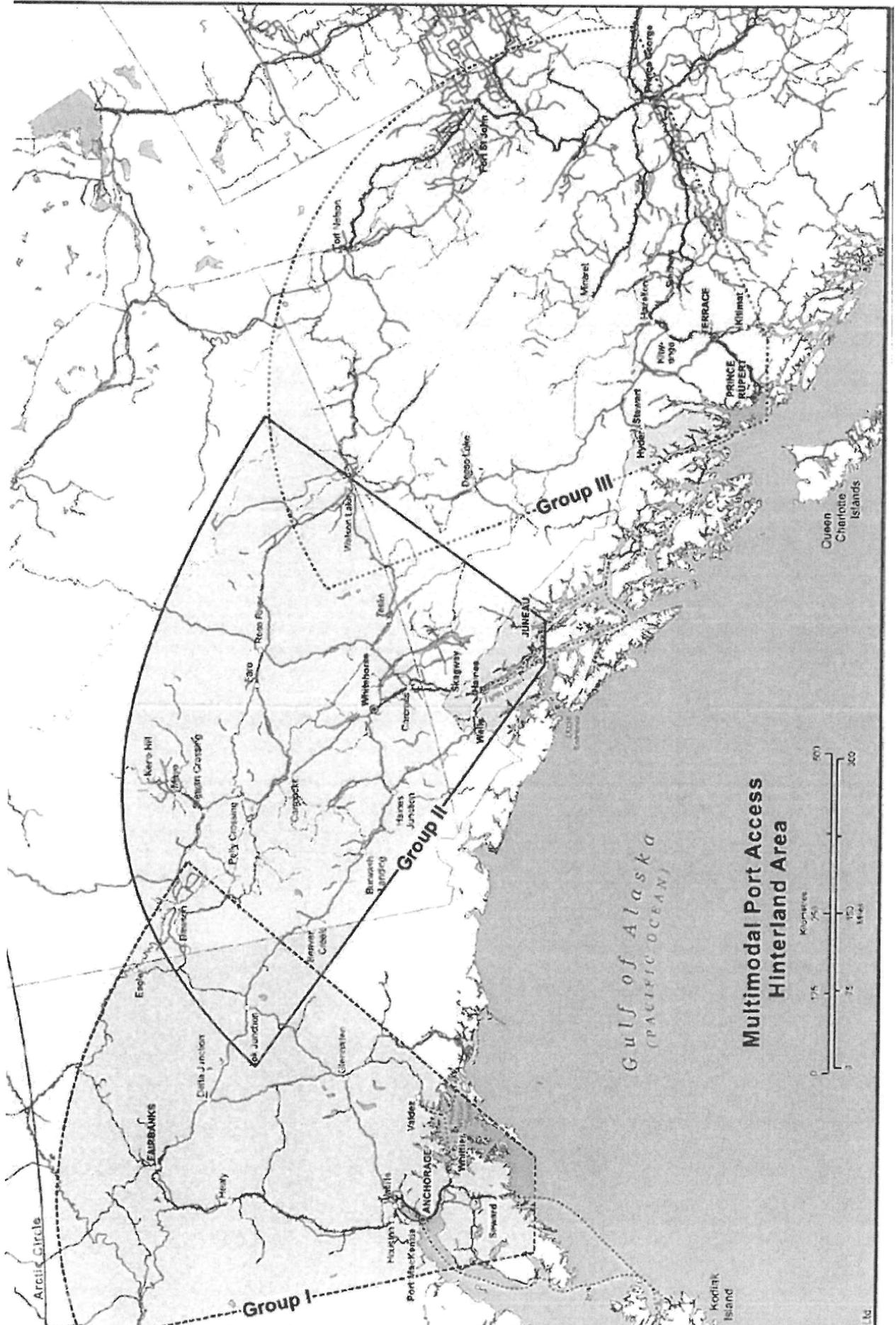
This assessment will build on the \$5 million ACRL Study conducted by the State of Alaska and the Government of Yukon in partnership. This study will refocus that work on rail access to Haines.

A complete library of all consultant studies conducted as part of the ACRL work is located in the Whitehorse, Yukon offices of the consulting firm that led the ACRL work.

These include previously unpublished engineering routing and cost estimates for rail access to Haines.

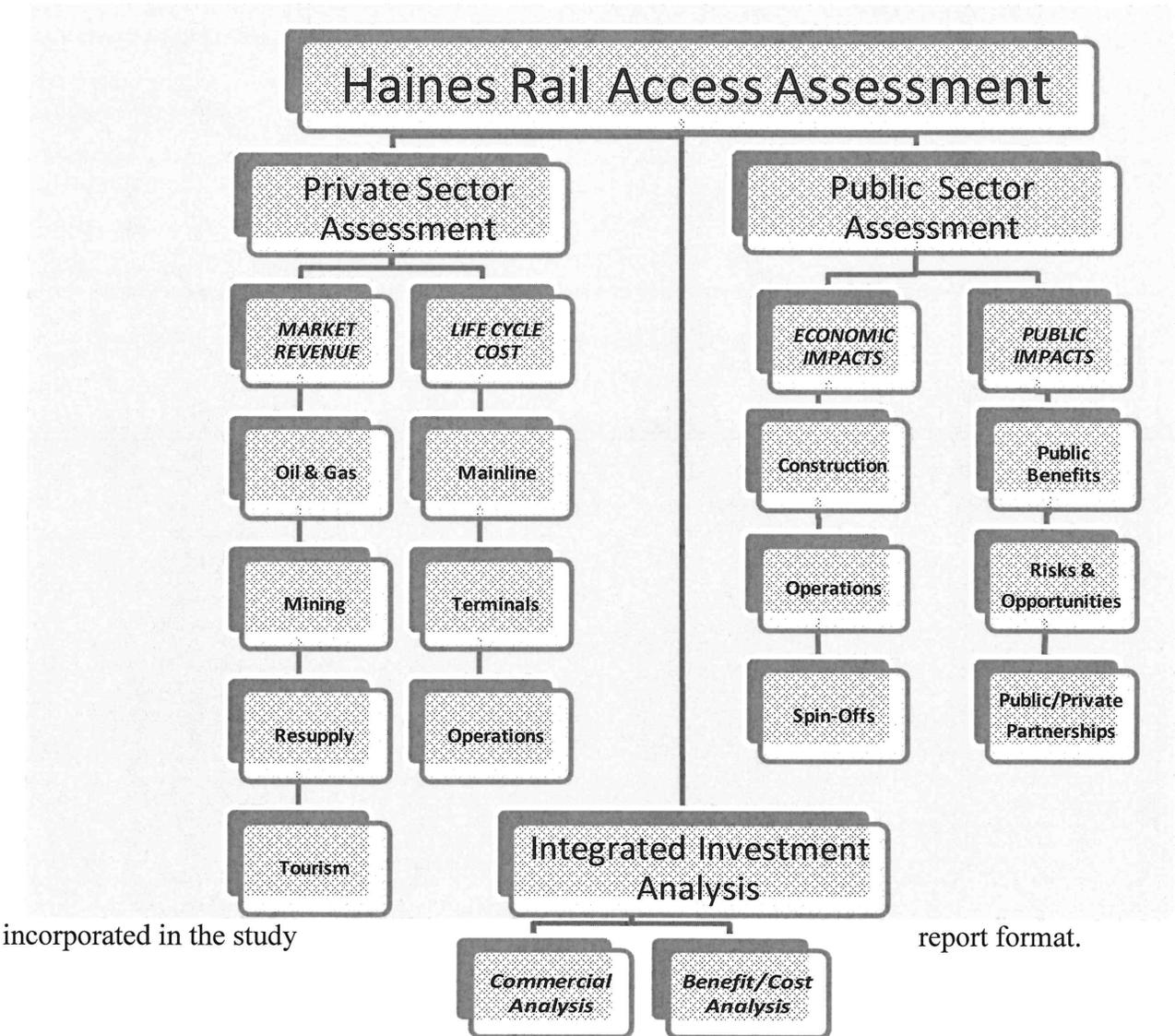
The work plan will follow the same format as the ACRL Study to complete a comprehensive business case assessment from both a private and public sector perspective. The ACRL Study data will be updated for recent changes in the long term resource development outlook for the Haines port catchment area shown on the following page. The contractor will also carefully consider potential synergies with the proposed Alberta Oil Sands Railway and the Alaska Railroad Northern Extension Project.





2. Work Breakdown Structure.

The Haines Rail Access Pre-Feasibility Study will extrapolate, update and analyze ACRL data specific to Haines rail access within the work breakdown structure below, which will also be



“Terminals” include railyards, especially the track layout and possible locations for a railyard in the Haines vicinity. “Mainline” includes likely route options from Haines to a potential rail hub at Carmacks in the Yukon interior. Carmacks is the connection point with the ACRL primary route between a Canadian National railhead in British Columbia and an Alaska Railroad extension to Delta Junction. It would also be the most likely connection point with an Alberta Oil Sands Railway. Until either of those proposals is realized, Carmacks can provide a truck/rail reload hub for mine haul feeder routes via the Klondike or Campbell Highways.

3. Approach.

The primary purpose of the Haines Rail Access Pre-Feasibility Study is to update the ACRL Study specifically as it relates to the *Haines Rail Benchmark*. It is noteworthy that the *Haines Rail Benchmark* designation is derived from the fact that a rail line between Carmacks and Haines was the only component of the Alaska Railroad to Canadian National connection that showed potential to fully cover life cycle capital and operating costs with commercial revenues.

This study will follow the ACRL Study format, and will contain the following:

- Private Sector Assessment;
- Public Sector Assessment; and
- Integrated Investment Analysis

3.1 Private Sector Assessment - will estimate commercial revenues, operating costs and investment capital required for Haines Rail Access industrial traffic; as well as conceptually identify additional passenger and general freight traffic potential:

a) Industrial Traffic – Identify revenue potential from northwest Canadian resource development and resupply markets. Although this could include smaller mines currently producing in Yukon (i.e., Wolverine, Minto and Alexco) that might not survive severe price cycles with high cost trucking, the focus is on the larger projects that are likely to want heavy haul rail capacity, the largest of which include:

- Crest Iron Ore
- Prophecy Platinum
- Casino Copper/Gold
- Selwyn Chihong Lead/Zinc
- Mackenzie Delta/Beaufort Oil & Gas
- Emerging in and outbound LNG Markets

b) Passenger Traffic – Conceptually identify intermodal passenger traffic potential afforded by cruise ship terminals in Haines, as well as both marine and air connections afforded by proximity to Juneau - if the Haines Rail Access project is an “island” railroad with no interior connections; and if there is connection with either or both of the Alaska or Canada rail systems.

c) Other Traffic – Conceptually identify traffic opportunities for intermodal containers, bulk fuel, LNG and other commodities. This will be done for both the island and connected rail development scenarios.

d) Life Cycle Costs – From the ACRL Study, this study will review the unpublished route evaluation, and identify the capital and operating costs, for Haines to Carmacks rail construction and operations – as well as previously published costs for an Alaska Railroad connection between Carmacks and Delta Junction. The study will also provide capital and operating cost estimates for intermodal transfer facilities at Haines, Haines Junction and Carmacks.

3.2 Public Sector Assessment – will identify broader public impacts and benefits anticipated for Haines Rail Access:

a) Economic Impacts – Direct, indirect and induced economic activity will be extrapolated from the Alaska Rail Link Study. This will include:

- One time additional economic activity and job creation during construction
- Life cycle additions to economic output and job creation during operations

b) Public Impacts – Benefits, risks and opportunities, beyond the business of building and operating a railroad, will be drawn from the ACRL Study to include the relative merits of rail versus truck for heavy haul operations to and from a revitalized Port of Haines. These will include:

- enhanced tourism
- improved public highway safety
- reduced highway maintenance and repair cost
- lower greenhouse gas emissions and environmental footprint.

The study will also review both positive and negative issues for public participation as a potential partner with private sector investors (Public/Private Partnerships).

3.3 Integrated Investment Analysis – The study will integrate a high level private and public business case assessment for Haines Rail Access with these features:

- a) Commercial Analysis – a discounted cash flow analysis of the extent to which life cycle rail revenues, after covering ongoing operating expenditures, can pay back capital and provide a return on investment.
- b) Benefit/Cost Analysis – quantify, where possible, and otherwise identify broader public benefits and costs as a project viability metric.

The analysis will integrate results from both the commercial and benefit/cost analyses and draw a conclusion on project financial feasibility at this point and make recommendations for progressing further. These recommendations will include suggested monetary and non-monetary actions that could be taken by the City and Borough of Haines, the State of Alaska, the Yukon Government, and the federal governments of both countries to facilitate development of a rail project if the integrated analysis demonstrates feasibility.

- Monetary actions range from direct appropriations, bonding, bond guarantees, AIDEA loans based on bonds and other government-sponsored fiscal arrangements.
- Non-monetary actions could include establishing an agreement with the Yukon Government to pursue the project, facilitating right-of-way acquisition, streamlining permitting, assigning the project to a new or existing entity.

The recommendations could also include suggestions and direction for further study and point out data gaps.

3.4 Haines Consultation – The contractor will make two visits to Haines for both stakeholder and public consultation.

The first visit will be scheduled mid-project to meet with such stakeholders as the Haines Port Development Council, the Chilkoot Indian Association, and members of the Haines Borough Assembly. The purpose of this visit will be to gain local knowledge of land access for terminal development and rail routing to confirm preliminary assessment assumptions.

The second visit will be scheduled at the end of the project to present draft report results to the public for commentary; followed by client meetings to review both public commentary and the draft report. The public commentary will be documented in an appendix to the final report.

3.5 Schedule – The completion deadline will be four months from the date of contract execution between the City and Borough of Haines and the contractor, but the contract may provide for extensions of time upon agreement of the parties.

Attachment 1

Haines Rail Access Assessment Cost Estimate

	Persondays	
COST ESTIMATES		
mainline	3	
terminals	5	
operations	5	
REVENUE ASSESSMENT		
Mining	4	
Resupply	3	
Oil & Gas	1	
Connecting	1	
Tourism	1	
ECONOMIC IMPACT		
Construction	5	
Operations	4	
Spin Offs	3	
INVESTMENT ANALYSIS		
Risk/Opportunity	2	
Commercial Viability	2	
Public Cost/Benefit	5	
Public/Private Partnership	1	
REPORTING RESULTS		
Progress Reports	2	
Draft Report	10	
Final Report	5	
HAINES CONSULTATION		
Initial Stakeholder Meetings	2	
Subsequent Public Meeting	1	
Draft Report/Commentary Review	1	
Document Haines Consultation	1	
Total Days	67	
Rate/Day	<u>\$1,400</u>	
Subtotal Fees	\$93,800	
HAINES CONSULTATION EXPENSES		
Haines POV/Ferry Travel	\$262	
Hotel@\$125/night x 2	\$250	
Meals @\$50/day x 2	<u>\$100</u>	
Subtotal/trip	\$612	
For 2 trips		\$1,224
PUBLICATION COSTS		
25 Draft & 25 Final Report Copies		\$1,500
Total Estimate	\$96,524	
Contingency @3%	\$2,896	
Total Fixed Price Proposal	\$99,420	



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-361
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Disposal of Surplus Material from PC Dock	1. Resolution 13-10-503
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/1/13	

Full Title/Motion:
 Motion: Adopt Resolution 13-10-503.

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

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$ See Summary	\$

Comprehensive Plan Consistency Review:

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

Summary Statement:

The Haines Borough contracted with Pacific Pile & Marine, LP (PPM) on 5/2/2013 for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project. The project scope includes demolition of areas of the Port Chilkoot Dock and trestle. The Borough has been storing surplus material from the demolition until it is determined how best to dispose of it. Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000. The Borough Manager has declared the surplus value of this lumber to be no more than \$25,000. This resolution will authorize the Borough Manager to dispose of the surplus material from the Port Chilkoot Dock demolition and determine which method or methods shall be used in its disposal.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of surplus material from the demolition of the Port Chilkoot Dock by any of the methods specified in Haines Borough Code 14.24.010 (Disposal of personal property).

WHEREAS, the Haines Borough contracted with Pacific Pile & Marine, LP on 5/2/2013 for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project; and

WHEREAS, the project scope includes demolition of areas of the Port Chilkoot Dock and trestle; and

WHEREAS, the Borough has been storing surplus material from the demolition until determining how best to dispose of it; and

WHEREAS, the Borough Manager has declared the surplus material has a total value of not more than \$25,000; and

WHEREAS, Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000; and

WHEREAS, Code states personal property not authorized for abandonment, destruction, sale, or recycling by the manager and no longer needed for municipal purposes shall be disposed of in one or more of the following means: by public outcry auction to the highest bidder; by public sealed bid auction to the highest bidder; to the best qualified proposer who responds to a request for proposals to acquire the property; by sale or transfer to an educational, religious, charitable or nonprofit association or corporation providing service to residents of Haines; or by sale or transfer to the United States, the state of Alaska or an Alaska municipal corporation or any agency or department thereof,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to dispose of surplus material from the demolition of the Port Chilkoot Dock by any of the methods specified in Haines Borough Code 14.24.010 (Disposal of personal property).

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



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-363
Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Contract with PND Engineers, Inc. for a Test Pile Investigation and Additional Site Plan Concept	1. Resolution 13-10-504 2. Manager's Report 3. Proposal from PND Engineers, Inc.
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 9/30/13	

Full Title/Motion:
 Motion: Adopt Resolution 13-10-504.

Administrative Recommendation:
 The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 183,319	\$ See Summary	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.: 4B -Improve harbor and marine facilities for resident use and to support commercial fishing activity, Page 144	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:

PND Engineers, Inc. is assisting the Borough in determining pile foundation and possible rock anchor requirements for a proposed new wave barrier structure for the South Portage Cove Harbor Expansion project. PND recommends test piles as the most cost effective program to collect additional geotechnical information, due to the availability of the Borough's construction contractor, Pacific Pile & Marine, at the Port Chilkoot Dock. PND also has proposed an additional site layout concept for the harbor expansion with an attempt to move the rubble mound breakwater, harbor entrance, dredging and float facilities closer to shore. PND has provided a proposal of \$183,319 for the test pile investigation and additional site plan concept. This work will be paid for out of the \$4.5 million Legislative grant that was awarded.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with PND Engineers, Inc. for an amount not to exceed \$183,319 for a test pile investigation and additional site plan concept for the South Portage Cove Harbor Expansion project.

WHEREAS, PND Engineers, Inc. is assisting the Borough in determining pile foundation and possible rock anchor requirements for a proposed new wave barrier structure for the South Portage Cove Harbor Expansion project; and

WHEREAS, PND recommends test piles as the most cost effective program to collect additional geotechnical information at the location of proposed harbor protection improvements to ascertain soil properties and bedrock conditions at depths below known soft clay layers, due to the availability of the Borough's construction contractor, Pacific Pile & Marine, at the Port Chilkoot Dock; and

WHEREAS, PND also has proposed an additional site layout concept for the harbor expansion with an attempt to move the rubble mound breakwater, harbor entrance, dredging and float facilities closer to shore; and

WHEREAS, PND has provided a proposal of \$183,319 for the test pile investigation and additional site plan concept; and

WHEREAS, PND Engineers proposes to complete the work on a time and expenses reimbursable basis; and

WHEREAS, these services will be paid for out of the \$4.5 million Legislative grant that was awarded for this purpose, and available funds are sufficient,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to contract with PND Engineers, Inc. for an amount not to exceed \$183,319 for a test pile investigation and additional site plan concept for the South Portage Cove Harbor Expansion project.

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



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

October 8, 2013

South Portage Cove Harbor Expansion

At its September 19, 2013 meeting, the Port and Harbor Advisory Committee adopted a motion recommending that the Assembly authorize the Manager to enter into a contract with PND Engineers for a test pile investigation and additional site plan concept for the South Portage Cove Harbor Expansion project. This is the language presented to the Port and Harbor Advisory Committee:

Near-term follow up investigation: I recommend requesting 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.

The Test Pile Investigation will provide additional geotechnical information at the proposed location of the wave barrier to determine soil properties and bedrock conditions at depth below the soft clay layer. This information will be used in the analysis of critical wave barrier design features, if that is the selected alternative, such as pile foundation and possible rock anchor requirements. Pacific Pile and Marine, who is already on-site for the Port Chilkoot Dock project, will drive the test piles under PND's direction from a barge with an impact hammer this fall/winter. PND will use a Pile Driving Analyzer (PDA) with accelerometers and strain transducers to obtain data that will be converted to velocity and force readings. The readings will provide evaluation of capacity, hammer performance, and stresses on the pile during installation. PND will attempt four test piles during a five day period and perform a re-strike on at least one of the piles following a set up period to determine whether strength increases over time after initial driving. The test piles will be extracted with a vibratory hammer and removed from the site. The estimated cost for the Test Pile Investigation is \$161,899.

The reason this work was not performed late last fall during the previous geotechnical investigation work, PND notes the following:

1. The proposed Test Pile program uses driven steel piles to reach depths of up to 100' below the clay layers – 200' overall depth. Last year's offshore drilling program was not equipped with piles and pile driving equipment. We are taking advantage of the opportunity to acquire test pile data while the Borough's heavy marine contractor is on site. It is about 50 percent less expensive than drilling to that depth.
2. Last year's drilling operations were performed off a small landing craft with anchors. Unfortunately, after the COE decided they could not perform the drilling work for the Borough, the work was authorized late in the year. As a result the drilling experienced extensive standby time waiting out windy fall weather on the landing craft. The drilling exceeded its budget by approximately \$100,000. We do not want to repeat that again so recently priced the drilling from a large barge and drilling costs now approached \$300,000.

3. Last year's drilling operations revealed heaving sands at the bottom of the clays preventing further drill penetration – water and sand upwelled within the drill casings to the deck of the barge. To control the hydrostatic pressure, larger casings and drilling muds were priced in to a drilling operation which increased costs considerably.
4. Last year's drilling operations anticipated holes to 100' in depth – the driller was paid to provide equipment to drill to 100'. Unfortunately soft lean clays were encountered much deeper than originally anticipated and were not equipped to drill deeper than 130'. PND is currently estimating 200' deep test piles.
5. While drilled bore holes provided good data for the rubble mound, the test piles will provide improved data for design purposes on the wave barrier.

PND will also prepare an additional site layout concept for the rubble mound alternative. This new rubble mound concept (Alternative 1B) will show the breakwater, harbor entrance, and float facilities closer to shore. Alternative 1B would require significant dredging in order to have a functioning harbor in addition to the harbor wave protection structure (breakwater). It should be noted that the added dredging will likely have increased permitting issues. PND will summarize geotechnical issues related to the new location and meet with the Borough to review the revised layout, if that is the selected alternative. The estimated cost for the additional site layout concept is \$21,420.



September 26, 2013

PND 102029.07

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

Re: South Portage Cove Harbor Expansion
Test Pile Investigation & Additional Site Plan Concept

Dear Mr. Earnest:

PND Engineers, Inc. (PND) appreciates the opportunity to provide this proposal for additional engineering services on the referenced project. We understand the Haines Borough wishes to proceed with two additional tasks to further refine the development options for the South Portage Cove Harbor Expansion project.

Task 1: Test Pile Investigation

PND will collect additional geotechnical information at the location of proposed harbor protection improvements to ascertain soil properties and bedrock conditions at depths below known soft clay layers. The information will be used to determine pile foundation and possible rock anchor requirements for a proposed new wave barrier structure. We have researched two options for collecting the required data – additional deep boreholes and test piles. Due to the availability of the Borough's construction contractor at the Port Chilkoot Dock, we have determined that test piles is the most beneficial and cost effective program for this task.

Pacific Pile and Marine will drive the test piles under PND's direction from a barge with an impact hammer later in the year. We will utilize the services of GRL/Pile Dynamics using a Pile Driving Analyzer (PDA) for dynamic monitoring of the test piles. GRL will install the necessary accelerometers and strain transducers to obtain data that will be converted to velocity and force readings. The readings will provide evaluation of capacity, hammer performance, and stresses on the pile during installation. We will attempt four test piles during a five day period and perform a re-strike on at least one of the piles following a set up period to determine whether strength increases over time after initial driving. The test piles will be extracted with a vibratory hammer and removed from the site. PPM will provide a 24" diameter test pile with open cutting shoe for the Test Pile Program.

Task 2: Additional Concept Site Plan

PND will prepare an additional site layout concept for the harbor expansion with an attempt to move the rubble mound breakwater, harbor entrance, dredging and float facilities closer to shore. We will summarize geotechnical issues related to the new location and meet with the Borough to review the revised layout. We will not collect any additional site geotechnical information for this layout until so directed by the Borough.

PND proposes to complete this additional work on a Time and Expenses (T&E) reimbursable basis using our standard billing rates, attached. The following summarizes our anticipated fees:

Task 1 – Test Pile Investigation	Est. Cost
PND on site labor – preparation, travel and test pile observations	\$ 12,720
PND geotechnical report update	\$ 18,600
PND expenses: travel, room and board	\$ 2,450
Pacific Pile & Marine (see attached PPM proposal)	\$ 91,259
GRL/Pile Dynamics (see attached email proposal)	\$ 25,000
PND 10% OH & Admin Fee on Third Party Expenses	\$11,870
Total	\$ 161,899

Task 2 – Additional Concept Site Plan	Est. Cost
PND labor – prepare additional harbor layout concept plan	\$ 6,840
PND summarize geotechnical issues in brief report	\$ 6,000
PND cost estimate	\$ 2,160
PND presentation – prepare PPT, travel, work session	\$ 5,760
PND expenses: travel, room and board	\$ 600
PND 10% OH & Admin Fee on Third Party Expenses	\$60
Total	\$ 21,420

Feel free to call me at any time if you have any questions or desire any changes to the proposed scope of services to better serve your needs. I have prepared an amendment to our agreement to cover these additional services should you find this proposal acceptable. We appreciate the opportunity to provide engineering services to the Haines Borough on this important harbor project and we look forward to working with you towards its successful completion.

Sincerely,
PND Engineers, Inc. | Juneau Office



Dick Somerville, P.E.
Vice President

Enclosures

OWNER: Haines Borough
DESC: Port Chilkoot Test Pile Program

ESTIMATE #:
COST CODE:

START DATE:
FINISH DATE:

COST SUMMARY

DESCRIPTION OF WORK	COST TYPE	QUANT.	UNITS	UNIT RATE	LABOR (LAB)	SUPPLIES (SUP)	PPM EQUIP (PPM)	RENT EQUIP (RENT)	SUBCONT (SUB)	PERM MAT'L (PM)
Supply Materials										
24"x0.5" used steel pile (open ended) at 80' EA, to be retained by PPM Wt = 126 lb/ft (80')*3 = 30,240 lbs	SUP	30240.0	LB	0.25		\$7,560				
Backing Ring for splice (assume for 3 test piles)	SUP	6.0	EA	50.00		\$300				
Shipping via AML	SUB	1.0	LS	8,333.57					\$8,334	
Transfer Piles via truck from PPM Yard to AML Dock	SUB	1.0	LS	350.00					\$350	
Load Piles at PPM to Truck	LAB	4.0	MH	62.00	\$248					
Move to Site, Offload Material from AML Barge, Drive, Splice & Extract Test Pile (Est 5 Days)										
Crane barge, vibratory and impact hammer, work skiffs, deck gear	PPM	50.0	HR	950.00			\$47,500			
6 Man Pile Driving Crew	LAB	300.0	MH	80.54	\$24,162					
Transport Materials from Haines to Seattle										
	SUP	30240.0	LB	0.05		\$1,512				

	LABOR	SUPPLIES	PPM EQUIP	RENT EQUIP	SUBS	PERM MATERIAL
SUBTOTALS:	\$24,410	\$9,372	\$47,500	\$0	\$8,684	\$0
Taxes @: 0.00%		\$0		\$0		
Add Markups	15.0%	10.0%	10.0%	10.0%	5.0%	10.0%
Markup Totals	\$3,662	\$937	\$4,750	\$0	\$434	\$0
ITEM TOTALS	\$28,072	\$10,309	\$52,250	\$0	\$9,118	\$0

DELETED

TOTAL CHANGE ORDER AMOUNT	\$99,748
Add Bond @ 0.630%	\$628
SUBTOTAL	\$100,377
Add B&O Tax: 0.000%	\$0.00
GRAND TOTAL	\$100,377

(9,118)
\$91,259.00
 ✓ CRS, PND
 9/26/13

Dick Somerville

From: Mike Hartley
Sent: Thursday, September 26, 2013 10:30 AM
To: Dick Somerville
Subject: PDA testing for SPCHE

Dick,

For the PDA testing I would recommend going forward with this. We will be using GRL/Pile Dynamics. Estimated costs are as follows for someone to fly up to the project site, record the information, and put together a brief data report:

Mob/Demob -	Estimate \$2000 for airfare (GRL/PDI will charge all expenses at cost)
Daily on-site	Estimate \$1,650 per day for the pda over 5 days = \$8,250 x 15% mark-up = \$9,500
Report -	\$700 per pile x estimated 5 locations = \$3,500 X 15% mark-up = \$4,000
Expenses	Meals, lodging and shipping - Estimate \$1,500 x 1.15 = \$1,700

Total Estimated cost \$17,200

Including oversight and review I would estimate \$25,000 for the work.

The work will include pile driving monitoring using a Pile Driving Analyzer (PDA) for dynamic monitoring of the test piles. They will attach the necessary accelerometers and strain transducers to obtain data that will be converted to velocity and force readings. The readings will provide evaluation of capacity, hammer performance, and stresses on the pile during installation. It might also be worthwhile having a re-strike performed on at least one of the piles since one the pile sets up it will change to some degree. This might require one extra day but the \$25,000 should cover us.

Let me know if you have any questions. We will likely use Camilo Alvarez, P.E. who handles the west coast.

Thanks,
Mike

Mike Hartley, P.E. | Senior Vice President
P|N|D Engineers, Inc.
1736 Fourth Avenue S, Suite A, Seattle, WA 98134
p. 206.624.1387 f. 206.624.1388 c. 206.300.6597

If you are not the intended recipient, please notify the sender immediately and delete this e-mail from your system.



**AMENDMENT
To
PROFESSIONAL SERVICES AGREEMENT
Between
HAINES BOROUGH
and
PND ENGINEERS, INC.
For Task Order
SOUTH PORTAGE COVE HARBOR EXPANSION
TEST PILES AND CONCEPT PLAN**

All provisions of the Basic Agreement not specifically changed by this Amendment remain in full force and effect. This Amendment makes the following changes:

Scope of Services. Provide additional engineering services in accordance with PND proposal dated May 6, 2013, attached

Schedule. Complete report by August 6, 2013.

Fee Basis. Compensation under this Amendment shall be provided on a Time and Expenses basis in accordance with the attached letter and breakdown, dated May 6, 2013. All third party reimbursable expenses shall include a 10% administrative markup.

PND Project Task	Task Description	Add'l \$ Amount This Amendment
102029.07	Test Pile Investigation & Additional Concept Plan	\$ 183,319

IN WITNESS WHEREOF, the parties have executed this Amendment:

Approved for Haines Borough:

By: _____
Title: Mark Earnest, Borough Manager

Approved for CONSULTANT:

By: 
Title: Dick Somerville, P.E., PND Vice President

Date: _____

Date: September 26, 2013



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-362
Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Contract with PND Engineers, Inc. for a Loss of Fill Investigation at Lutak Dock	1. Resolution 13-10-505 2. Manager Report 3. Proposal from PND Engineers, Inc.
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/1/13	

Full Title/Motion:
Motion: Adopt Resolution 13-10-505.

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

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 89,506	\$	\$ 90,000 - See Summary

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.: N/A	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
Large sink holes have developed near the face of the sheet pile dock at Lutak Dock in recent years. PND Engineers, Inc. has provided a proposal of \$89,506 for a reconnaissance level investigation into the cause of the loss of fill at the dock. The proposal includes an underwater inspection and assessment of the Lutak Dock; logging test pits excavated by Borough staff to observe sub-grade conditions; and a written report. PND Engineers proposes to complete the work on a time and expenses reimbursable basis. The funding for this investigation would be appropriated from Lutak Dock user fees through FY14 budget amendment Ordinance 13-01-351 being considered by the assembly. Because of this, the resolution would not become effective until ordinance adoption.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-10-505

Draft

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with PND Engineers, Inc. in the amount of \$89,506 for a loss of fill investigation at Lutak Dock.

WHEREAS, large sink holes have developed near the face of the sheet pile dock at Lutak Dock in recent years; and

WHEREAS, PND Engineers, Inc. has provided a proposal of \$89,506 for a reconnaissance level investigation into the cause of the loss of fill at the dock; and

WHEREAS, the proposal includes an underwater inspection and assessment of the Lutak Dock; logging test pits excavated by Borough staff to observe sub-grade conditions; and a written report; and

WHEREAS, PND Engineers proposes to complete the work on a time and expenses reimbursable basis; and

WHEREAS, the assembly will consider an amendment to the FY14 budget through Ordinance 13-10-351 to appropriate \$90,000 of Lutak Dock user fees,

NOW, THEREFORE, BE IT RESOLVED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. The borough manager is hereby authorized to contract with PND Engineers, Inc. for a loss of fill investigation at Lutak Dock for an amount not to exceed \$89,506; and

Section 2. Effective Date. On or before the date on which the contract Notice to Proceed is issued, non-code Ordinance 13-10-351 shall be adopted by the borough assembly appropriating sufficient funds for the contract.

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



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

October 8, 2013

Lutak Dock Loss of Fill Investigation

As previously reported, the Assembly identified Lutak Dock upgrades as the Borough's top legislative capital project priority for FY 2014. The Loss of Fill Investigation was the top priority task within that funding request. Unfortunately, the Borough received no funding from the Legislature in 2013. The last major improvements at the Lutak Dock occurred in 2002 when corroded arc closure cells were retrofitted with straight sheet pile connecting walls, dock face dredging was performed and new fender panels were installed. Since then, sink holes have been observed near the berth face which may be indicative of loss of fill material through either the original sheet pile cell walls or through the closure arcs that were repaired at some time after 2002. PND will contact Reid Middleton, the engineering firm responsible for the 2002 project to review their design documents and final as built records of the constructed improvements.

Attached is a scope of services and fee proposal from PND Engineers to perform a reconnaissance level structural evaluation and investigation into the cause of the loss of fill at the dock. The scope includes an underwater inspection and assessment performed by underwater engineers, test pit investigation and log holes using Borough equipment and operator, and a final assessment and report of findings by PND. Echelon Engineering will be retained to perform the following services: a Level I visual inspection from the top to the mudline to identify gross defects in the 10 steel sheet pile cells and their associated closure arcs; a Level II cleaning and detailed investigation at a minimum of three sites; and a Level III ultrasonic thickness testing in the top/splash zone, the intertidal zone, at the mudline, and at a location in between within the submerged zone, at representative elevations both above and below water at each site. The reconnaissance investigation will focus on documenting the existing conditions of the dock, identifying deficiencies and determining the cause of the loss of fill and sinkholes. Engineering and planning of repairs will follow this project phase.

The Level I visual inspection will focus on identifying visible corrosive section loss resulting in perforations; separation of the interlocks between the individual sheet piles; any mechanical impact or other damage that may have caused breaches in the wall; as well as any accumulation of fill material on the mudline that may have been hydraulically transported from behind the wall resulting in void spaces and sink holes. The proposed inspection will also include evaluation of the condition of any sacrificial anodes associated with the piles selected for Level II and III inspection. The sheet piles will be inspected following protocols developed by the US Navy and adopted by the ASCE in their *Underwater Investigations – Standard Practices Manual*. The project will also provide for a corrosion potential survey using a Copper-Copper (II) Sulfate reference cell. The electrical potential will be measured at 5 foot intervals from the water surface to the mudline, with representative readings taken at each cell and closure arch.

I am recommending Assembly approval of the proposed scope of services from PND for the Lutak Dock Loss of Fill Investigation. The estimated cost for this investigation is \$89,506. Funding for the proposed project is the Lutak Dock Enterprise Fund.



September 27, 2013

PND 13J074

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

Re: Lutak Dock
 Loss of Fill Investigation

Dear Mr. Earnest:

Over the past several years, the Lutak Dock has experienced numerous occasions where large sink holes have developed near the face of the sheet pile dock. PND Engineers, Inc. (PND) has prepared this proposal at the Borough's request to perform a reconnaissance level investigation into the cause of the loss of fill at the dock.

Scope of Services

The last major improvements at the Lutak Dock occurred in 2002 when corroded arc closure cells were retrofitted with straight sheet pile connecting walls, dock face dredging was performed and new fender panels were installed. PND will contact Reid Middleton, the engineering firm responsible for the 2002 project to review their design documents and final as built records of the constructed improvements. We will contract with Echelon Engineering to perform an Underwater Inspection and Assessment of the Lutak Dock this fall – see attached proposal for further details. Then we will log test pits excavated by Borough staff at critical locations along the dock to observe subgrade conditions. PND will conclude this investigation with a written report containing our findings. Our focus will be documenting the existing conditions of the dock, identifying deficiencies and determining the cause of the loss of fill and sinkholes. Engineering and planning of repairs are not included in this task however may be negotiated at a future date once more information is known.

Fee Proposal

PND proposes to complete this investigation on a Time and Expenses (T&E) reimbursable basis using our standard billing rates, attached. The following summarizes our anticipated fees:

Loss of Fill Investigation	Est. Cost
Meet with Reid Middleton and review available project documentation	\$ 5,760
Field assistance of Echelon dive team during underwater investigation	\$ 3,360
Test pit investigation and log holes – Haines Borough equipment and operator	\$ 5,640
Echelon Engineering Underwater Inspection & Assessment	\$ 49,988
2 day dive standby allowance @ \$ 4,336/day	\$ 8,672
Final Assessment & Report of Findings	\$7,800
Travel Expenses, Room & Board, Perdiem	\$2,200
PND 10% OH & Admin Fee on Third Party Expenses	\$6,086
Total	\$ 89,506

September 27, 2013

Page 2

We appreciate the opportunity to provide engineering services to the Haines Borough on this important dock investigation. Feel free to call me at any time if you have any questions or desire any changes to the proposed scope of services to better serve your needs.

Sincerely,
PND Engineers, Inc. | Juneau Office

A handwritten signature in blue ink, appearing to read "Dick Somerville".

Dick Somerville, P.E.
Vice President

Enclosures



PND ENGINEERS, INC
STANDARD RATE SCHEDULE
EFFECTIVE MAY 2013

<u>Professional:</u>	Senior Engineer VII	\$180.00
	Senior Engineer VI	\$165.00
	Senior Engineer V	\$150.00
	Senior Engineer IV	\$140.00
	Senior Engineer III	\$130.00
	Senior Engineer II	\$120.00
	Senior Engineer I	\$110.00
	Staff Engineer V	\$105.00
	Staff Engineer IV	\$100.00
	Staff Engineer III	\$95.00
	Staff Engineer II	\$90.00
	Staff Engineer I	\$85.00
	Senior Scientist	\$110.00
	Senior Environmental Scientist	\$105.00
Environmental Scientist	\$90.00	
GIS Specialist	\$90.00	
<u>Surveyors:</u>	Senior Land Surveyor	\$105.00
	Land Surveyor I	\$95.00
<u>Technicians:</u>	Technician VI	\$125.00
	Technician V	\$105.00
	Technician IV	\$90.00
	Technician III	\$80.00
	Technician II	\$70.00
	Technician I	\$45.00
	CAD Designer V	\$95.00
CAD Designer IV	\$85.00	
CAD Designer III	\$70.00	

September 12, 2013

PND Engineers, Inc.
9360 Glacier Highway, Suite 100
Juneau, Alaska, 99801

ATTN: Mr. Dick Sommerville, P.E.
Vice President

**RE: PROPOSAL FOR – Underwater Inspection & Assessment of
Lutak Dock, Haines, Alaska**

Dear Mr. Sommerville:

Further to your request, this letter is submitted as our proposal to carry out underwater inspection and assessment of Borough of Haines, portion of the Lutak Dock in Haines, AK. The proposed investigation is in support of your structural evaluation and maintenance planning for the facility.

Project Understanding & Scope

We understand that maintenance has been carried out on the Lutak Dock since our previous inspection of the City owned portion conducted in 2002. We further understand that during your recent site visits you have noted apparent sink holes developing near the berth face, and that these depressions may be indicative of loss of fill material through either the original sheet pile cell walls or through the closure arcs that were repaired at some time after 2002. We understand that the structure has also had a galvanic cathodic protection system installed since 2002.

Field Investigation

For the proposed project, Echelon Engineering will be responsible for the investigation of the 10 steel sheet pile cells and their associated closure arcs. The sheet piles will be inspected following the three tiered protocol developed by the US Navy and adopted by the ASCE in their *Underwater Investigations – Standard Practices Manual*. The sheet piles within the 10 Borough owned cells and the closure arcs will be subjected to a Level I visual inspection from the top to the mudline to identify gross defects such as: visible corrosive section loss resulting in perforations; separation of the interlocks between the individual sheet piles; any mechanical impact or other damage that may have caused

breeches in the wall, as well as any accumulation of fill material on the mudline that may have been hydraulically transported from behind the wall resulting in void spaces and sink holes.

Additionally, a minimum of three test sites will be selected for Level II cleaning and detailed investigation. These sites will be selected as representative of the submerged conditions of the cells and closure arcs. For comparative purposes one of the inspected cells will be a re-inspection on one of the three cells inspected in the 2002 study. The other two sites will be selected by the PND representative and based on a review of the Level I findings.

Level III ultrasonic thickness testing will be conducted at representative elevations both above and below water at each site. The UT readings will be taken in the top/splash zone, the intertidal zone, at the mudline and at a location in between within the submerged zone.

The proposed inspection will also include evaluation of the condition of any sacrificial anodes associated with the piles selected for Level II and III inspection. The anodes will be evaluated relative to the percentage volume remaining. Time permitting, the condition of the other anodes in the structure will also be carried out.

Time permitting, additional Level II and Level III sites will be selected with the PND representative and data obtained. The project will also provide for a corrosion potential survey. Representative readings will be taken at each cell and closure arch. The survey will be carried out utilizing a Copper Copper Sulphate reference cell specifically maintained for sea water. The electrical potential will be measured at 5 foot intervals from the water surface to the mudline. This survey will be conducted during the highest available tide to provide the maximum coverage of the surface of the structure.

Report

The inspection findings will be presented in a report which will include a brief narrative of the inspection methodologies utilized, the observed conditions, a tabular listing of the inspection findings, a drawing providing the identification of the inspected members, as well as representative photographs illustrating damage or typical conditions encountered. No provision for the preparation of a draft report has been included. Three hardcopies and one electronic copy (pdf) of the report will be submitted.

Schedule

We understand the urgent requirement to conduct the investigation before the onset of winter weather. To that end we have reviewed our schedule and the shipping constraints and are prepared to conduct the field investigation during the interval of September 30

through October 4, 2013. This period would provide for mobilization, demobilization and an approximate three and a half day effort towards the various inspection tasks. We recognize the need to be flexible on a project such as this and are prepared to work with you to modify the scope to achieve the best value from the inspection effort. Should the initial Level I investigation provide unusual findings, we will work with you to amend the various inspection activities to derive the best information in the available budgeted time.

Fee

Our estimated fee for the project is \$ 49,988 and is itemized on the accompanying spread sheet. We have also provided a stand by rate should adverse weather conditions develop that prevent fieldwork due to unsafe conditions. That rate is \$ 4,336 per day.

We look forward to the possibility of assisting you with this project. Should you have any questions regarding this proposal, if you require any additional information, or if our proposed level of effort does not meet with your anticipated requirements, please do not hesitate to contact our office.

Given the tight time frame we would request that we receive your approval at your early convenience. Should the project go ahead, we will need to ship our equipment by September 24th in order to meet the schedule as outlined above.

Yours Truly,
Echelon Engineering, Inc.



Shelley D. Sommerfeld, P.E.
President

SDS/ebv
Enclosures



**Echelon
Engineering**



ECHELON ENGINEERING, INC.

Civil / Marine Consulting Engineers
Lynnwood, WA

FEE PROPOSAL For PND Engineers Lutack Dock, Borough of Haines, Alaska

September 12, 2013

Scope Of Services -

Provide personnel and equipment to conduct an underwater inspection of the Borough owned portion of the Lutack Dock located in Haines, AK. The investigation will provide for a 5 day effort (incl mob/demob) to conduct Level I visual inspection of the 10 steel sheetpile cells and their associated closure arcs. Additionally Level II and III inspection will be carried out on representative cells and closure arcs. The scope of the inspection will be as detailed in the accompanying letter. A written report along with representative photos, sketches and associated data for the inspected members will also be prepared and submitted.

1. Labor: Field, Including Mob, De-Mob

P.E./Project Manager	49 hrs @	\$146.51 =	\$7,178.99
Technician IV - Field Supervisor	57 hrs @	\$104.65 =	\$5,965.05
Technician III	53 hrs @	\$74.75 =	\$3,961.75
Technician II	53 hrs @	\$56.81 =	<u>\$3,010.93</u>
Sub-Total Field Labor			\$20,116.72

2. Reimbursable Expenses

Travel (Alaska Air)	4 LS @	\$1,300.00 =	\$5,200.00
Transportation (Equip. Shipping)	2 LS @	\$3,750.00 =	\$7,500.00
Accommodations	4 dy @	\$500.00 =	\$2,000.00
Per Diem	4 dy @	\$324.00 =	\$1,296.00
Work Boat (16-18 ft)	4 dy @	\$190.00 =	\$760.00
Vehicle	5 dy @	\$100.00 =	\$500.00
SCUBA Dive System	4 dy @	\$55.00 =	\$220.00
Air, (Dive Tanks)	4 dy @	\$60.00 =	\$240.00
Underwater Communications	4 dy @	\$85.00 =	\$340.00
Underwater Camera System	4 dy @	\$55.00 =	\$220.00
Pneumatic Cleaning Equip.	4 dy @	\$100.00 =	\$400.00
Ultrasonic Thickness Equip.	4 dy @	\$110.00 =	\$440.00
Corrosion Potential Equip.	4 dy @	\$100.00 =	\$400.00
Consumables & Supplies	4 dy @	\$30.00 =	\$120.00
Photo Processing	1 LS	=	\$100.00
Report Reproduction	1 LS	=	<u>\$250.00</u>
Sub-Total Expenses			\$19,986.00

3. Logistics, Administration, Reporting

Principal/Proj Manager PE	8 hrs @	\$146.51 =	\$1,172.08
Corrosion Specialist PE	22 hrs @	\$143.52 =	\$3,157.44
Technician IV - Field Supervisor	32 hrs @	\$104.65 =	\$3,348.80
CAD Technician	8 hrs @	\$62.79 =	\$502.32
Word Processor	30 hrs @	\$56.81 =	<u>\$1,704.30</u>
Sub-Total Reporting			\$9,884.94

PROPOSED FEE

\$49,988

This fee is valid for a period of 3 months

ECHELON ENGINEERING, INC.



ECHELON ENGINEERING, INC.

Civil / Marine Consulting Engineers
Lynnwood, WA

FEE PROPOSAL For PND Engineers Lutack Dock, Borough of Haines, Alaska

September 12, 2013

Scope Of Services - Standby Rate Per Day

In the event that weather conditions develop such that the working condition are unsafe, i.e. extreme winds or cold, the crew will standby as directed by PND Engineers, or by the Borough of Haines until conditions improve and work can be resumed.

1. Labor: Field, Including Mob, De-Mob

P.E./Project Manager	8 hrs @	\$146.51 =	\$1,172.08
Technician IV - Field Supervisor	8 hrs @	\$104.65 =	\$837.20
Technician II	8 hrs @	\$74.75 =	\$598.00
Technician II	8 hrs @	\$56.81 =	<u>\$454.48</u>
Sub-Total Field Labor			\$3,061.76

2. Reimbursable Expenses

Travel (Alaska Air)	0 LS @	\$1,300.00 =	\$0.00
Transportation (Equip. Shipping)	0 LS @	\$3,750.00 =	\$0.00
Accommodations	1 dy @	\$500.00 =	\$500.00
Per Diem	1 dy @	\$324.00 =	\$324.00
Work Boat (16-18 ft)	0 dy @	\$190.00 =	\$0.00
Vehicle	1 dy @	\$100.00 =	\$100.00
SCUBA Dive System	0 dy @	\$55.00 =	\$0.00
Air, (Dive Tanks)	0 dy @	\$60.00 =	\$0.00
Underwater Communications	0 dy @	\$85.00 =	\$0.00
Underwater Camera System	0 dy @	\$55.00 =	\$0.00
Pneumatic Cleaning Equip.	0 dy @	\$100.00 =	\$0.00
Ultrasonic Thickness Equip.	0 dy @	\$110.00 =	\$0.00
Corrosion Potential Equip.	0 dy @	\$100.00 =	\$0.00
Consumables & Supplies	0 dy @	\$30.00 =	\$0.00
Photo Processing	0 LS	=	\$100.00
Report Reproduction	0 LS	=	<u>\$250.00</u>
Sub-Total Expenses			\$1,274.00

3. Logistics, Administration, Reporting

Principal/Proj Manager PE	0 hrs @	\$146.51 =	\$0.00
Corrosion Specialist PE	0 hrs @	\$143.52 =	\$0.00
Technician IV - Field Supervisor	0 hrs @	\$104.65 =	\$0.00
CAD Technician	0 hrs @	\$62.79 =	\$0.00
Word Processor	0 hrs @	\$56.81 =	<u>\$0.00</u>
Sub-Total Reporting			\$0.00

PROPOSED FEE (Per Day)
This fee is valid for a period of 3 months

\$4,336

ECHELON ENGINEERING, INC.



Agenda Bill No.: 13-360
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Contract for Haines Library Building Controls	1. Resolution 13-10-506 2. Quote from Murray and Associates, P.C.
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/1/13	

Full Title/Motion:
 Motion: Adopt Resolution 13-10-506.

Administrative Recommendation:
 The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 11,900	\$ 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 Haines Borough Public Library heat controls are inoperative and the building's HVAC system is not functioning properly as a result. Murray and Associates, P.C. has provided a proposal of \$11,900 for engineering for producing bid documents for the Haines Library Building Controls Replacement project. The Haines Borough Assembly appropriated \$50,000 in the FY14 budget's Capital Improvement Projects (CIP) fund for library mechanical controls.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

HAINES BOROUGH
RESOLUTION No. 13-10-506

Draft

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Murray and Associates, P.C. in the amount of \$11,900 for Haines Library Building Controls Replacement Engineering.

WHEREAS, the Haines Borough Public Library heat controls are inoperative and the building's HVAC system is not functioning properly as a result; and

WHEREAS, Murray and Associates, P.C. has provided a proposal of \$11,900 for engineering for producing bid documents for the Haines Library Building Controls Replacement project; and

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

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to contract with Murray and Associates, P.C. in the amount of \$11,900 for Haines Library Building Controls Replacement Engineering.

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

Murray & Associates, P. C.
P.O. Box 21081
Juneau, Alaska 99802

Client: Haines Borough
Project Name: Haines Public Library Building Control Upgrade
Date: 08/30/13
MAPC Project Number:

Fee Schedule (\$/HR)	145	125	95	80	
TASK DESCRIPTION	PRIN	PROJ	DES	DFTR	SUB
Mechanical Engineering	ENGR	ENGR	ENGR		TOTAL
	(HRS.)	(HRS.)	(HRS.)	(HRS.)	(\$)
CONSTRUCTION DOCUMENTS DESIGN					
Preliminary Research	2.0	0.0	1.0	0.0	\$ 385
Site Visit	5.0	0.0	0.0	0.0	\$ 725
Calculations/Research/ Equip Selection	2.0	0.0	2.0	0.0	\$ 480
Design Drawings	5.0	0.0	10.0	6.0	\$ 2,155
Specifications; Technical Mechanical	3.0	0.0	5.0	0.0	\$ 910
Cost Estimate	1.0	0.0	1.5	0.0	\$ 288
Review and Final Submittals	2.0	0.0	2.5	2.0	\$ 688
CONSTRUCTION DOCUMENTS CD TOTAL:	20.0	0.0	22.0	8.0	\$ 5,630
TRIP Expenses (1) - Day Trip					\$ 300
TOTAL MECHANICAL ENG DESIGN SERVICES - Time and Expense Not To Exceed					\$ 5,930

BIDDING AND CONSTRUCTION SERVICES					
Bidding Coordination (No Site Visit)	3.0	0.0	2.0	0.0	\$ 625
Submittal Review	3.0	0.0	10.0	0.0	\$ 1,385
Project Coordination	5.0	0.0	6.0		\$ 1,295
Inspection (1) with Report	12.0	0.0	0.0	0.0	\$ 1,740
Final Coordination	3.0	0.0	2.0	0.0	\$ 625
BIDDING & CONSTRUCTION SERVICES TOTAL:	26.0	0.0	20.0	0.0	\$ 5,670
TRIP Expenses (1) - Day Trip					\$ 300
GRAND TOTAL MECHANICAL ENG DESIGN & CS SERVICES - Time and Expense Not To Exceed					\$ 11,900

Scope of Work is understood to prepare bid ready technical documents for a building controls upgrade at Haines Library. Technical specifications will be provided hereunder but Owner will provide front end and General specifications.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-364
Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize change order with Pacific Pile & Marine, LP	1. Resolution 13-10-507 2. Quote from Pacific Pile & Marine, LP
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/1/13	

Full Title/Motion:
Motion: Adopt Resolution 13-10-507.

Administrative Recommendation:
The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 53,998	\$	\$ 53,998 (see summary)

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 contracted with Pacific Pile & Marine, LP (PPM) on 5/2/2013 for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$5,804,340. The assembly in July 2013 authorized the Borough Manager to execute a contract change order with PPM to relocate the Letnikof Cove float system. The Manager has since approved two additional change orders, for a handrail addition and sealant over spray metalized components. The approach dock decking at the Port Chilkoot Dock is heavily worn, with many cracks. The Manager recommends replacing the decking at this time, while PPM is mobilized, to reduce costs. PPM quoted a price of \$53,998 to replace the existing decking. The Borough's change order brings the total contract to \$6,113,347.55. The assembly will consider an amendment to the FY14 budget through Ordinance 13-10-351 to appropriate \$490,000 of Commercial Passenger Vessel (CPV) Tax funds for the Port Chilkoot Dock trestle replacement project.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to execute a contract change order with Pacific Pile & Marine, LP for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$53,998.

WHEREAS, the Haines Borough contracted with Pacific Pile & Marine, LP (PPM) on 5/2/2013 for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$5,804,340; and

WHEREAS, the assembly in July 2013 authorized the Borough Manager to execute a contract change order with PPM for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$242,370 to relocate the Letnikof Cove float system by fabricating new concrete anchor blocks and steel stake piles; and

WHEREAS, the Borough Manager has since approved two additional change orders, for \$7,781 and \$4,858, for a handrail addition and sealant over spray metalized components; and

WHEREAS, the approach dock decking at the Port Chilkoot Dock is heavily worn, with many cracks; and

WHEREAS, the Borough Manager recommends replacing the decking at this time, while PPM is mobilized, to reduce costs; and

WHEREAS, PPM quoted a price of \$53,998 to replace the existing decking; and

WHEREAS, the Borough's change order brings the total contract to \$6,113,348; and

WHEREAS, the assembly will consider an amendment to the FY14 budget through Ordinance 13-10-351 to appropriate \$490,000 of Commercial Passenger Vessel (CPV) Tax funds for the Port Chilkoot Dock trestle replacement project,

NOW, THEREFORE, BE IT RESOLVED BY THE HAINES BOROUGH ASSEMBLY that the borough manager is hereby authorized to execute a contract change order with Pacific Pile & Marine, LP for the Port Chilkoot Dock and Letnikof Cove Harbor Renovations project for an amount not to exceed \$53,998.

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

Haines RFQ #004b

OWNER: Haines Borough
DESC: Replace Existing Decking at Regrade With New 6"x12" Decking

ESTIMATE #:
COST CODE:

START DATE:
FINISH DATE:

COST SUMMARY

DESCRIPTION OF WORK	COST TYPE	QUANT.	UNITS	UNIT RATE	LABOR (LAB)	SUPPLIES (SUP)	PPM EQUIP (PPM)	RENT EQUIP (RENT)	SUBCONT (SUB)	PERM MAT'L (PM)
Purchase Materials										
ACZA 6" x 12" x random lengths not to exceed 20' (per JR @ Matheus - \$1.70 per bf) Weight = 3.6 lb/bf = 3.6 x 16,884 = 60,783 lbs.	PM	1774.0	LF	10.20						\$18,095
Henry 208R Wet Patch	SUP	1.0	GAL	19.47		\$19				
Woodlife Creocoat	SUP	3.0	GAL	45.00		\$135				
3100 - 5/16" x 10" spiral shank spikes (750 lbs.)	PM	1.0	LS	1,275.00						\$1,275
Shipping via AML	SUB	1.0	LS	4,555.08					\$4,555	
Transfer Materials From AML to Site	LAB	3.0	MH	80.54	\$242					
Remove All Decking 2 men removing / 4 men on transport activity (mini/truck&trailer/forklift)	LAB	48.0	MH	80.54	\$3,866					
Install & nail down decking Install decking - 4 man crew (forklift/compressor/pickup)	LAB	160.0	MH	80.54	\$12,886					
Tools & Equipment										
Pamtay Barge	PPM	2.0	HR	950.00			\$1,900			
#8000 all terrain telescoping forklift	RENT	12.0	HR	34.00				\$408		
3/4 ton pick up	PPM	14.0	HR	10.00			\$140			
Mini Excavator	RENT	8.0	HR	20.00				\$160		
500 amp welder	RENT	43.0	HR	13.00				\$559		
210 cfm air compressor	RENT	43.0	HR	11.50				\$495		
Incidental Costs (misc. tools, supplies and equipment)										
Safety & first aid	SUP	211.0	MH	4.00		\$844				
Subsistance	SUP	211.0	MH	1.00		\$211				
	LAB	211.0	MH	11.00	\$2,321					

	LABOR	SUPPLIES	PPM EQUIP	RENT EQUIP	SUBS	PERM MATERIAL
SUBTOTALS:	\$19,315	\$1,209	\$2,040	\$1,622	\$4,555	\$19,370
Taxes @: 0.00%		\$0		\$0		
Add Markups	15.0%	10.0%	10.0%	10.0%	5.0%	10.0%
Markup Totals	\$2,897	\$121	\$204	\$162	\$228	\$1,937
ITEM TOTALS	\$22,212	\$1,330	\$2,244	\$1,784	\$4,783	\$21,307

TOTAL CHANGE ORDER AMOUNT	\$53,660
Add Bond @: 0.630%	\$338
SUBTOTAL	\$0.00
Add B&O Tax: 0.000%	\$0.00
GRAND TOTAL	\$53,998



Agenda Bill No.: 13-359
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Authorize Disposal of Surplus Police Vehicles	1. Resolution 13-10-508
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/1/13	

Full Title/Motion:
 Motion: Adopt Resolution 13-10-508.

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
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Summary Statement:

The assembly in August 2013 authorized the Borough Manager to contract with Kendall Ford in the amount of \$51,690 for the purchase of two Ford Interceptor SUVs. The Borough purchased the Interceptor SUVs to replace the police department's two hybrid Ford Escape SUVs, which were too small to properly secure prisoners and protect officers. At that time, the Ford Escape SUVs were budgeted to be sold to generate revenue. Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000. This resolution will authorize the Borough Manager to dispose of them according to the methods described in HBC 14.24.010.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of two Haines Borough Police Department hybrid Ford Escape SUVs in accordance with Haines Borough Code 14.24.010 (Disposal of personal property).

WHEREAS, the assembly in August 2013 authorized the Borough Manager to contract with Kendall Ford in the amount of \$51,690 for the purchase of two Ford Interceptor SUVs; and

WHEREAS, the Borough purchased the Interceptor SUVs to replace the police department's two hybrid Ford Escape SUVs, which were too small to properly secure prisoners and protect officers; and

WHEREAS, the Ford Escape SUVs were budgeted to be sold to generate revenue; and

WHEREAS, the Borough Manager has declared the total value of both vehicles to be no more than \$25,000; and

WHEREAS, Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000; and

WHEREAS, Code states personal property not authorized for abandonment, destruction, sale, or recycling by the manager and no longer needed for municipal purposes shall be disposed of in one or more of the following means: by public outcry auction to the highest bidder; by public sealed bid auction to the highest bidder; to the best qualified proposer who responds to a request for proposals to acquire the property; by sale or transfer to an educational, religious, charitable or nonprofit association or corporation providing service to residents of Haines; or by sale or transfer to the United States, the state of Alaska or an Alaska municipal corporation or any agency or department thereof,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to dispose of two Haines Borough Police Department hybrid Ford Escape SUVs by any of the methods specified in Haines Borough Code 14.24.010 (Disposal of personal property).

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



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-366

Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: Support for BackRoads Alaska Program	1. Resolution 13-10-509 2. Memo from the Tourism Director 3. Resolution 11-05-279, adopted 5/24/11
Originator: Borough Assembly	
Originating Department:	
Date Submitted: 8/19/13	

Full Title/Motion:
Motion: Adopt Resolution 13-10-509.

Administrative Recommendation:

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

Comprehensive Plan Consistency Review:	
Comp Plan Policy Nos.: Objective 3D, Page 106	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary Statement:
<p>Resolution No. 11-05-279 was adopted on 5/24/11 and was taken to the cruise lines to begin an effort to bring more large cruise ships to our small community. "BackRoads Alaska" is still working to bring more large ships to Haines, although the concept being promoted to the cruise lines has evolved in the last two years.</p> <p>Similar to the last resolution, this new resolution would seek to waive dock fees for one year for the first ship to adopt the double port option between Haines and Skagway. A small delegation from both Haines and Sitka will be meeting with each of the cruise lines in Seattle and Florida in late October; this Resolution would be an added benefit to the presentation.</p>

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

Assembly Action:	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:

**A Resolution of the Haines Borough Assembly supporting
"BackRoads Alaska" marketing to cruise lines.**

WHEREAS, the Haines Borough is supportive of cooperative efforts based on a partnership involving second tier ports of Southeast Alaska working in unison to provide a cruise marketing brand, known as "BackRoads Alaska;" and

WHEREAS, due to downward drop of cruise passengers and severe economic loss in the Southeast region, the second tier ports will work to increase visitation by offering this exclusive cruise as "BackRoads Alaska" to enhance the local economics and improve visitation to the communities; and

WHEREAS, this marketing brand will be presented by a delegation to cruise line representatives to market this brand and ports to their repeat passengers to return to Alaska with a new port option and for new passengers looking to visit less crowded ports; and

WHEREAS, the "BackRoads Alaska" concept will utilize current mainline ports in conjunction with "BackRoads Alaska" ports for itineraries; and

WHEREAS, Haines is uniquely positioned to participate as a double port with the mainline port of Skagway thus offering two destinations in one day for cruise guests and showcasing Haines' well-known attractions, history, tours, activities, natural qualities, services and products to passengers and crew; and

WHEREAS, the "BackRoads Alaska" brand will make a strong statement of continuing to further a successful relationship with cruise lines and enhance Haines' community for visitors and residents,

NOW, THEREFORE, BE IT RESOLVED, that the Haines Borough Assembly officially designates its support of the "BackRoads Alaska" brand to cruise lines and will waive the dockage fee for the first year for the first cruise ship that accepts a Haines / Skagway double docking in their itinerary; and

BE IT FURTHER RESOLVED, that Haines Borough encourages the unified efforts to attract a cruise line's participation to the second tiered ports of Southeast Alaska through the "BackRoads Alaska" brand.

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

MEMORANDUM

Haines Convention & Visitors Bureau

PO Box 530

Haines, AK 99827

(907) 766-2234 / (907) 766-3155 fax

www.haines.ak.us email: hcvb@haines.ak.us

To: Mark Earnest, Borough Manager
From: Tanya Carlson, Tourism Director
Date: October 2, 2013
RE: **Resolution of Support for “BackRoads Alaska”**

In May of 2011 the Haines Borough Assembly passed a resolution of support for “BackRoads Alaska” (Resolution No. 11-05-279). This Resolution was taken to the cruise lines beginning an effort to bring more large cruise ships to our small community. “BackRoads Alaska” is still working to bring more large ships to Haines, although the concept being promoted to the cruise lines has evolved in the last two years.

Background information on the “BackRoads Alaska” brand has been included below to either acquaint or re-orient yourself with this marketing brand. The main change in what is being presented falls in the itineraries. The brand was created to market specifically to repeat cruisers with the idea of creating “BackRoads Alaska” itineraries that specifically focused on “BackRoads Alaska” ports including Haines, Sitka and Icy Strait Point. The scheme does not work in the business model for the cruise lines and thus “BackRoads Alaska” has evolved to feature a “BackRoads Alaska” port within current itineraries that include mainline ports such as Juneau, Ketchikan or Skagway.

On the Haines side of “BackRoads Alaska” we will be pushing the opportunity of double port days with a ship docking in both Skagway and Haines in one day as some ships historically did. Ideally two ships could come to Haines in one day with one ship docking on the morning and then go to Skagway and switch berths with another ship that could dock in Haines in the afternoon/evening.

Similar to the last resolution, this resolution would be seeking to waive dock fees for one year for the first ship to adopt the double port option between Haines and Skagway. A small delegation from both Haines and Sitka will be meeting with each of the cruise lines in Seattle and Florida in late October; this Resolution would be an added benefit to the presentation.

“BackRoads Alaska” History

In 2010, tourism representatives from Haines, Hoonah and Sitka, all second-tier cruise ports, discussed community struggles in past years as a result of the decline in ship visits to our communities. Discussion focused on the economic hardships this trend has had on local businesses and on the communities in general. More importantly, the groups began to devise a plan to bring a meaningful number of cruise visitors back to our ports. They named the plan “BackRoads Alaska” and have had a positive response from tour operators and attractions not only in Haines, but from the other communities as well.

A professionally printed, full-color booklet was developed that addressed all pertinent information for cruise planners for each port, including:

1. Natural, historical & cultural information
2. Shore excursion tours sold on the ship (with capacities)
3. Shopping opportunities, and activities available for guests not taking tours
4. Area maps and Visitor Center information
5. Port and dock facilities, including port-use fees and taxes
6. Transportation infrastructure (i.e. shuttle buses and taxis)
7. Medical and emergency facilities
8. Important contact numbers (i.e. Mayor, Borough Manager, Harbormaster, Tourism Director, etc.)
9. Ancillary services (i.e. fresh seafood and other locally-available products)
10. Airport facilities for emergency access or client accessibilities
11. Customs and immigration services
12. Future plans for port improvements that are ongoing or pending more cruise traffic

The booklet provided this information in a comprehensive, easy-to reference format and helped the cruise lines envision the unique experience their passengers would gain. It described who the cruise would appeal to. The "BackRoads Alaska" brand concept was developed to fit return "cruisers" wanting a less traveled Alaskan experience. This concept would also be appealing to cruisers new to Southeast Alaska.

A small delegation met with a majority of the major cruise lines in spring of 2011 and presented "BackRoads Alaska." Several of the cruise lines looked upon it favorably and others were skeptical of how "BackRoads Alaska" was set up, only featuring "BackRoads Alaska" ports. Much discussion happened after these meetings as well as continued dialogues with cruise line executives. These discussions helped evolve "BackRoads Alaska" into more of an added experience/benefit when combined with mainline ports. A "BackRoads Alaska" port features the "Road Less Traveled," a unique and, sometimes, exclusive experience for their cruise guests as opposed to docking in a port with 4 other ships.

The cruise line deployment schedules for 2015 will be done by the end of December this year; we hope to have our efforts be considered in this planning process. As mentioned, in 2011 "BackRoads Alaska" began to peak the interest of some of these executives, however, "BackRoads Alaska" was still in its infancy. The current strategy works better within the cruise lines business model. Time is of the essence and support from the Haines Assembly with the added gesture of waived port fees for the first ship to adopt a double port day is a solid gesture to the cruise lines.

We thank you for your support of this approach to gain additional economic benefit to Haines.

On behalf of the Haines Tourism Advisory Board:

Barb Mulford, Judy Heinmiller, Jeff Butler, Jason Gaffney, Karen Hess, Rhonda Hinson and Michael Marks

Cruise Ship / Passenger Statistics:

The following are some cruise ship statistics from 2007 to 2013 along with the estimated cruise passenger and crew numbers for 2011.

These numbers do not reflect the small ships. In past years, Haines hosted the American Spirit, Alaska Dream Cruises and Un-Cruise Adventures throughout the season.

Cruise Statistics from 2007 to 2010:

Year	Ships	Passengers	Crew
May-07	2	2,523	1,156
Jun-07	4	5,137	2,323
Jul-07	6	5,294	2,431
Aug-07	5	6,483	2,845
Sep-07	4	3,741	1,716
Total	21	23,178	10,471

Year	Ships	Passengers	Crew
May-08	3	2,693	1,187
Jun-08	11	10,109	4,360
Jul-08	10	12,378	4,952
Aug-08	8	9,038	3,924
Sep-08	5	7,552	3,230
Total	37	41,770	17,653

Year	Ships	Passengers	Crew
May-09	3	2,791	1,641
Jun-09	7	7,959	3,328
Jul-09	10	16,669	6,851
Aug-09	8	8,434	3,625
Sep-09	6	5,451	2,508
Total	34	41,304	17,953

Year	Ships	Passengers	Crew
May-10	2	2,565	1,106
Jun-10	5	6,464	2,776
Jul-10	7	10,010	4,212
Aug-10	6	6,030	2,810
Sep-10	4	5,781	2,504
Total	24	30,850	13,408

Year	Ships	Passengers	Crew
May-11	1	1,421	605
Jun-11	7	6,859	2,979
Jul-11	6	7,095	3,329
Aug-11	6	9,187	3,835
Sep-11	3	2,701	1,182
Total	23	27,263	11,930

Year	Ships	Passengers	Crew
May-12	2	2,716	1,168
Jun-12	5	7,549	3,187
Jul-12	6	7,744	3,488
Aug-12	6	9,156	3,812
Sep-12	3	3,826	1,733
Total	22	30,991	13,388

Year	Ships	Passengers	Crew
May-13	3	3,919	1,729
Jun-13	5	7,958	3,408
Jul-13	5	6,928	2,941
Aug-13	6	10,941	9,622
Sep-13	2		
Total	21	29,746	17,700

*September numbers will not be available from Dalton Cache until mid-October.

2014 Cruise Ship Estimate: (based on double occupancy)

Year	Ships	Passengers	Crew
May-14	2	3,114	1,392
Jun-14	4	6,228	2,784
Jul-14	5	8,076	3,596
Aug-14	5	6,912	3,184
Sep-14	3	4,380	1,972
Est. Total	22	28,010	12,928

A Resolution of the Haines Borough Assembly supporting development of an "Alaska Backroads" marketing Concept.

WHEREAS, the Haines Borough is supportive of cooperative efforts based on a partnership involving second tier ports of Southeast Alaska working in unison to provide a new cruise marketing itinerary, known as "Alaska Backroads;" and

WHEREAS, due to the downward drop of cruise passengers and severe economic loss in the Southeast region, the second tier ports will work to increase visitation by offering this exclusive cruise as "Alaska Backroads" to enhance the local economies and improve visitation to the communities; and

WHEREAS, this new marketing itinerary will be presented by a delegation to cruise lines representatives to market this itinerary to their repeat passengers to return to Alaska with a new cruise itinerary option and for new passengers looking to visit less crowded ports; and

WHEREAS, the "Alaska Backroads" will utilize an itinerary to call on each port without any other large ship schedule conflicts; and

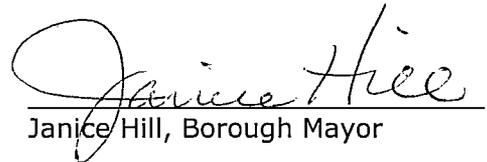
WHEREAS, Haines is uniquely positioned to participate in this weekly cruise itinerary to showcase Haines' well-known attractions, history, tours, activities, natural qualities, services and products to passengers and crew; and

WHEREAS, the "Alaska Backroads" itinerary will make a strong statement of continuing to further a successful relationship with a cruise line and enhance Haines' community for visitors and residents,

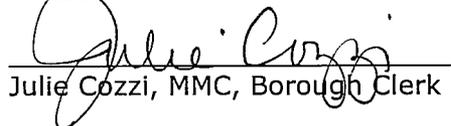
NOW, THEREFORE, BE IT RESOLVED, that the Haines Borough Assembly officially designates its support of the "Alaska Backroads" marketing concept to a cruise line and will waive the dockage fee for the first year for the first cruise ship that accepts this itinerary; and

BE IT FURTHER RESOLVED, the Haines Borough encourages the unified efforts to attract a cruise line's participation to the second tiered ports of Southeast Alaska through the "Alaska Backroads" marketing concept.

Adopted by a duly-constituted quorum of the Haines Borough Assembly on the 24th day of May, 2011.


Janice Hill, Borough Mayor

Attest:


Julie Cozzi, MMC, Borough Clerk





Agenda Bill No.: 13-365
 Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: FY14 Budget Amendment #2	1. Ordinance 13-10-351 2. Amendment Worksheet
Originator: Borough Manager	
Originating Department: Administration	
Date Submitted: 9/30/13	

Full Title/Motion:
 Motion: Introduce Ordinance 13-10-351 and set a first public hearing for 10/22/13.

Administrative Recommendation:
 The borough manager recommends this ordinance.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ see ordinance	\$ see ordinance	\$ see ordinance

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
 This provides for the addition or amendment of the FY 14 budget. The draft ordinance explains the various proposed amendments. The Finance Committee plans to meet prior to the first public hearing to review the proposed amendments and will have a recommendation for the assembly at that time.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s): 10/8/13
Meeting Date(s): 10/8/13	Tabled to Date:

HAINES BOROUGH
ORDINANCE # 13-10-351

AN ORDINANCE OF THE HAINES BOROUGH, PROVIDING FOR THE ADDITION OR AMENDMENT OF SPECIFIC LINE ITEMS TO THE FY14 BUDGET.

BE IT ORDAINED BY THE ASSEMBLY OF THE HAINES BOROUGH, ALASKA:

Section 1. Classification. This ordinance is a non-code ordinance.

Section 2. Effective Date. This ordinance shall become effective immediately upon adoption.

Section 3. Appropriation. This appropriation is hereby authorized as part of the budget for the fiscal year July 1, 2013 through June 30, 2014.

Section 4. Purpose. To provide for the addition or amendment of specific line items to the FY14 budget as follows:

(1) To recognize FY14 federal Secure Rural Schools revenue.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
01-12-00-4534	Federal Revenue	\$0	\$190,000	\$190,000
(2) To accept and appropriate a Community Coastal Impact Assistance Grant from the State of Alaska in the amount of \$101,386 for Sawmill Creek fish passage improvements.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
31-01-00-4341	State Revenue	\$0	\$101,386	\$101,386
31-01-00-7392	Project Expenditures	\$0	\$101,386	(\$101,386)
Total for Sawmill Creek Fish Passage Improvements Grant				\$0
(3) To appropriate \$90,000 of Lutak Dock User Fees to fund a Lutak Dock condition survey.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
93-01-00-7312	Professional & Contractual Service	\$7,800	\$97,800	(\$90,000)
(4) To reduce an FY13 Capital Improvement Project fund appropriation for "Advanced Engineering;" to increase an FY14 appropriation for "Library Mechanical Controls;" and to create new appropriations for "Mosquito Lake School Fan Replacement" and "High School Roof Engineering."				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
50-01-00-7392	Project Exp. – Advanced Engineering	\$50,000	\$16,500	\$33,500
50-01-00-7392	Project Exp. – Library Mechanical	\$50,000	\$60,000	(\$10,000)
50-01-00-7392	Project Exp. – Mosquito Lake School Fan Replacement Engineering	\$0	\$15,000	(\$15,000)
50-01-00-7392	Project Exp. – HS Roof Engineering	\$0	\$8,500	(\$8,500)
Net increase to CIP budget				0

(5) Appropriate \$20,000 of harbor deferred maintenance funds to extend electricity to the harbor grid.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
92-01-00-8430	Harbor Improvements	\$0	\$20,000	(\$20,000)
(6) Appropriate \$10,000 of harbor deferred maintenance funds to construct stairs to the harbor grid.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
92-01-00-8430	Harbor Improvements	\$0	\$10,000	(\$10,000)
(7) To record an operating transfer from the areawide general fund to the harbor fund in order to use \$18,000 of raw fish tax receipts to replace the coil in the harbor ice house.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
01-98-00-8200	Operating Xfer – OUT fr Gen.Fund	\$0	\$18,000	(\$18,000)
92-98-00-8200	Operating Xfer – IN to Harbor Fund	\$0	\$18,000	\$18,000
92-01-00-8430	Harbor Improvements	\$0	\$18,000	(\$18,000)
Total cost for ice house coil replacement				(\$18,000)
(8) Reduce appropriations from Assembly to reflect non-profit funding plan adopted by the Assembly with resolution #13-08-487.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
20-02-00-7710	Appropriations from Assembly	\$30,000	\$28,750	\$1,250
21-01-00-7392	Project Expenditures	\$50,000	\$30,509	\$19,491
23-02-00-7710	Appropriations from Assembly	\$18,000	\$17,500	\$500
Total reduction in budgeted Appropriations from Assembly				\$21,241
(9) To re-appropriate the balance remaining in the FY13/14 CIP budget for “Water & Sewer Wet Jetter” for other water and sewer equipment including: a sewer pump, a heater for the water treatment plant, water meters, and meter radio read modules.				
		Current Budget	Proposed Budget	Fund Balance Increase / (Decrease)*
50-01-00-7392	Project Exp. – Wet Jetter	\$75,000	\$0	\$75,000
50-01-00-7392	Project Exp. – Water/Swr equipment	\$0	\$75,000	(\$75,000)
Total change in CIP expenditures				\$0
(10) To appropriate an additional \$1,500 for FY14 solid and hazardous waste department. \$700 is due to the summer 2013 household hazardous waste collected being over budget due to increased collection and \$850 is for the purchase of collection drums for waste storage.				
		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
01-05-00-7312	Professional & Contractual	\$19,500	\$20,200	(\$700)
01-05-00-7320	Material & Equipment	\$50	\$850	(\$800)
Increase to Solid & Hazardous Waste Budget				(\$1,500)

(11) To eliminate \$110,000 of appropriations from the Capital Improvement Project (CIP) fund for projects which will be postponed or which were completed under budget and to eliminate a \$110,000 transfer from the Commercial Passenger Vessel (CPV) Tax Fund for Front street sidewalks. This budget amendment funds the front street project with unused CIP funds instead of CPV funds.

		Current Budget	Proposed Budget	Fund Balance Increase / (Decrease)*
50-01-00-7392	FY08CIP Morgue Improvements	\$42,000	\$0	\$42,000
50-01-00-7392	FY09CIP Water Line Crossing	\$60,000	\$56,940	\$3,060
50-01-00-7392	FY10CIP Project Contingency	\$49,800	\$20,000	\$29,800
50-01-00-7392	FY11CIP Public Safety Boiler	\$60,558	\$55,000	\$5,558
50-01-00-7392	FY12CIP Public Facilities Pickup	\$26,000	\$23,736	\$2,282
50-01-00-7392	FY12CIP PW Used Plow Truck	\$51,000	\$23,700	\$27,300
34-98-00-8254	Operating Xfer- From CPV fund	\$110,000	\$0	\$110,000
50-98-00-8254	Operating Xfer- From to CIP fund	\$110,000	\$0	(\$110,000)
Increase to CPV fund balance				\$110,000

(12) To appropriate \$490,000 of Commercial Passenger Vessel (CPV) Tax funds for the Port Chilkoot Dock trestle replacement project for construction contingency (\$146,000) and for construction administration and inspection (\$344,000) with an operating transfer from the CPV fund to the special projects grant fund.

		Current Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
34-98-00-8254	Operating Xfer- Fr CPV fund (PC Trestle)	\$0	\$490,000	(\$490,000)
42-06-00-8254	Operating Xfer- To Grant fund (PC Trestle)	\$0	\$490,000	\$490,000
42-06-00-7392	Project Expenditures –PC Trestle	\$0	\$490,000	(\$490,000)
Total additional appropriation for PC Dock trestle replacement				(\$490,000)

(13) To appropriate \$2,000 areawide general funds for FY14 software maintenance and support for the Caselle Property Tax Billing Module.

		Current FY14 Budget	Proposed FY14 Budget	Fund Balance Increase / (Decrease)*
01-01-15-7312	Professional Svc (Software)	\$8,850	\$10,850	(\$2,000)

* A positive amount in this column is favorable. A negative amount is unfavorable.

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: 10/08/13
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___

HAINES BOROUGH

Proposed Amendments to the FY14 Budget - Ordinance #13-10-351



	Areawide General	Medical Service Area	Title III Forest Receipts	Econ Dev & Tourism	CPV Tax*	Harbor*	Lutak Dock*	
FUND	01	20	21	23	34	92	93	
Fund/Cash Balance as of 06/30/2013 (unaudited) \$	2,663,267	200,033	319,768	397,101	467,561	823,955	543,704	
Current FY14 BUDGET Excess Revenue Over (Under) CASH Expense	(352,522)	(73,169)	(50,000)	(95,704)	(81,100)	(51,759)	309,592	Totals
Proposed Amendments:								
1. Federal Secure School Revenue	190,000							190,000
2. Sawmill Creek Grant								-
3. Lutak Dock Condition Survey							(90,000)	(90,000)
4. Reappropriate CIP Engineering Funds								-
5. Electricity to the Harbor Grid						(20,000)		(20,000)
6. Stairs to the Harbor Grid						(10,000)		(10,000)
7. Harbor Ice House coil	(18,000)					-		(18,000)
8. Reduce Assembly Appropriations		1,250	19,491	500				21,241
9. Reappropriate leftover Wet Jetter budget								-
10. Additional funds for hazardous waste disposal	(1,500)							(1,500)
11. Fund Front St sidewalks from CIP					110,000			110,000
12. Fund PC Dock Trestle CI/CA & Contingency					(490,000)			(490,000)
13. Property Tax Billing Maintenance/Support	(2,000)							(2,000)
								-
PROPOSED Excess Revenue Over (Under) CASH Expense	(184,022)	(71,919)	(30,509)	(95,204)	(461,100)	(81,759)	219,592	(310,259)
Proposed Fund/Cash Balance 06/30/2014 \$	2,479,245	128,114	289,259	301,897	6,461	742,196	763,296	(310,259)
Annual Operating Budget	4,893,011							
Projected Fund Balance as % of Operating Budget	51%							
Amount in excess of 6 months of operating budget	32,740							

* The cash balance is shown instead of the fund balance and the cash budget is shown which does not include depreciation expense

Julie Cozzi

From: Ron Jackson [ronphotos@hotmail.com]
Sent: Friday, September 20, 2013 10:06 AM
To: Julie Cozzi
Subject: PARC Vacancy

Hi Julie. At our meeting on Wed we unanimously voted to recommend having Susan on our committee.
Ron.

Haines Borough Application for Board Appointment

Appointment (I am not currently on the board)

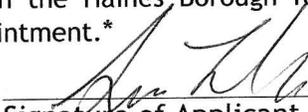
Reappointment (I am currently a member of the board)

Check the board, commission, or committee for which you are applying :

	Planning Commission		Port and Harbor Advisory Committee
	Tourism Advisory Board		Fire Service Area Board #3 (Klehini)
	Chilkat Center Advisory Board		Letnikof Estates Road Maintenance Service Area Board
X	Parks and Recreation Advisory Board		Riverview Road Maintenance Service Area Board
	Museum Board of Trustees		Historic Dalton Trail Road Maintenance Service Area Board
	Library Board of Trustees		Four Winds Road Maintenance Service Area Board
	Public Safety Commission		
	Temporary (Ad-hoc) Board/Committee _____		

Name: Susan Luescher
 Residence Address: lot 5, Letnikof Estates
 Mailing Address: P.O. Box 1212, Haines AK 99827
 Business Phone: 275-750-4165 Home Phone: 907-766-2650
 Fax: _____ Email: susanluescher@gmail.com

I declare that I am willing to serve as a member of the designated board, commission, or committee. Please enter my name for consideration of appointment by the mayor, subject to confirmation by the assembly. I am a registered voter of the State of Alaska and have resided within the Haines Borough for at least thirty (30) days preceding this date or the date of appointment.*


 Signature of Applicant

9/9/13
 Date

PLEASE BRIEFLY DESCRIBE YOUR QUALIFICATIONS (You may attach a resume):

Having biked, biked, and skied throughout my life and my work as a landscape architect, I feel I have some expertise that would contribute to PARC. The collaborative effort of PARC is a great opportunity to get involved and participate in the community of Haines

* HBC 2.60.020 - A member of a committee, board or commission shall be a resident of the borough as defined below...a person qualifying as a borough resident shall: A) Continue to maintain the person's principal place of residence within the corporate boundaries of the borough and have done so for at least 30 days immediately preceding the date of the person's appointment by the mayor; and B) Physically occupy said residence for at least 30 days immediately preceding the date of the person's appointment by the mayor.

Resume attached

Susan Luescher's experience as a landscape architect has taken her throughout the western United States, and finally, to Alaska. Susan brings expertise in design and planning and has gained experience in waterfront design and planning. Her professional experience in project and consultant management includes meeting facilitation, site analysis, construction documentation, document preparation, and research. Susan's sensitivity to communities and the environment influences her work and she is committed to public participation in the design process. Exposing natural processes aesthetically through design, including the infiltration of storm water, has become a focus in her career. For each project, Susan investigates the culture and history in order to incorporate the "story of the place" in her work. Susan's studies in geology and her work experience in the field have given her a unique understanding of the landscape and its processes. Through experience and research, Susan has become aware of a variety of community, ecological, and cultural concerns, many of which have been addressed in the design of projects she has been involved with. She is a registered Professional Landscape Architect in many western states. Susan's project experience includes:

Landscape Master Plan, City of Kodiak, Alaska. Much of downtown Kodiak was impacted during the upgrade of the underground utilities, which provided an opportunity for upgrade. The downtown core was assessed and the circulation, connections, and landscape design was evaluated. Links and destinations outside the central area were also evaluated. Susan was part of the team that produced the Kodiak Landscape Master Plan which gave the community a chance to refine its character, and tell its story through aesthetics, impressions, and thoughtful design. Susan's role as landscape architect was key in research, public outreach, meetings, and design.

Harbor Planning and Cruise Ship Sidewalk Design, City of Kodiak, Alaska. Susan worked with the design team on initial site visit and planning of the various location options and design of the cruise ship sidewalk portion of this project.

Chanlyut, Cook Inlet Tribal Council (CITC), Anchorage, Alaska. Chanlyut, is Dena'ina Athabascan for "new beginning" and is the CITC's residential and vocational facility in Anchorage, AK. The Chanlyut model is based on the Delancey Street Foundation in San Francisco. Chanlyut has been successful at offender and addiction rehabilitation by providing work, training, and sober support for residents, much of which is achieved through the operation of the Mountain View Diner and other training businesses. Due to Chanlyut's success they need to relocate to a new facility. By working with the client, architect, and builder, Susan developed the narrative and conceptual landscape design which included a crop garden to provide "horticulture therapy" and a "harvest menu" for the diner.

Duck Creek Relocation/Restoration, Juneau, Alaska. Due to the expansion of the Juneau Airport, it became necessary to relocate Duck Creek. Through this project, Susan designed and sited structures for stream restoration, erosion control, and fish habitat. These features utilize boulders, logs, tree revetments, and root wads that were salvaged during project excavation. The revegetation effort involved the stockpiling and reuse of salvaged wetland topsoil with its inherent live seed and organisms. Dormant cuttings were the primary revegetation plant material used. A trailhead and parking for a popular community trail were also improved.

Section 36 Master Plan, Anchorage, Alaska. Susan was project manager for the Section 36 Master Plan, the purpose of which was to identify the appropriate types and levels of recreation use for an undeveloped square mile of new parkland. Located at the foothills of the Chugach Mountains in southeast Anchorage, Section 36 provides unique and valuable opportunities for recreation and education. Appropriate access and facility improvements consistent with the site characteristics and proposed uses was determined and appropriate funding was also evaluated.



Education

Masters - Landscape Architecture
Cornell University
Ithaca, New York

Bachelor of Science - Geology
University of Nevada,
Reno, Nevada

Professional Registration

Alaska, #12186
Arizona #49048
Nevada # 745

Professional Awards

2011 ASLA AK Chapter
Merit Award/City of Kodiak
Landscape Master Plan
DOWL HKM (w/K.Doniere)

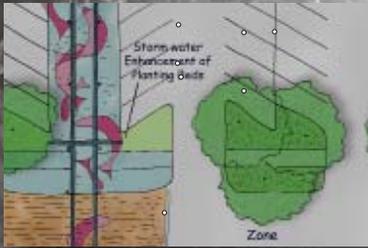
2004/Recipient of Edna Bailey
Sussman Environmental Grant

Citizenship

United States
Switzerland



City of Soldotna Comprehensive Plan, Alaska. A recently completed project was the planning effort for the City of Soldotna. Susan was the project landscape architect and was involved in all aspects of the project, which included the revisioning the city's downtown and community use. A major influence on the city includes a huge influx of tourists during the summer fishing season and a winter without people or events. This impacts both the economy and the quality of life of the people of the community, both of which are important and must coexist. This plan addresses these complex issues and involves a major community involvement effort; including stakeholder interviews, open houses, and public charettes.



Adams County Regional Park Master Plan, Colorado. Susan's role on this project was all-inclusive and included project management, design, document preparation, and meeting presentation/facilitation. The Adams County Master Plan update serves as a guide for future development including the reclamation of a mining site and its transformation into a regional park. The three gravel pits will be utilized for recreation and water storage. The patterns of water embody the design concept and will be interpreted throughout the park, where it will be used as an aesthetic, functional, and educational component.



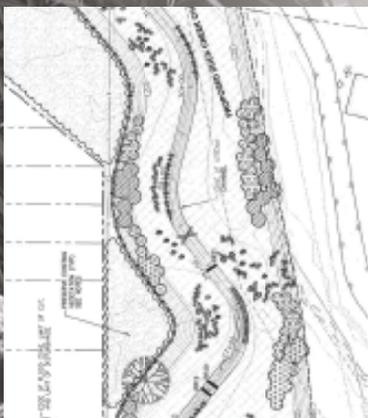
Indian Hill - Quechan Indian Tribe, Arizona/California. Susan is part of the team and lead landscape architect currently working on the redevelopment master plan for the Quechan Indian Tribe on the Fort Yuma Indian Reservation located on the border between California and Arizona. Due to the growth of the Quechan Tribe's economy, a need for planned and organized community development has arisen. This development plan will address circulation improvements and the resolution of conflicts between pedestrians and vehicles. The siting of a number of facilities including elder independent housing, a tribal annex, a health care facility, and an area for multi-use commercial development around a town square, are also part of the scope. This project involves working with the Quechan Indian Tribe Economic Development Administration and presentations to the Tribal Council.

Lake Mead National Recreation Area Entry Stations, Nevada. Susan was project manager, lead designer, and production manager from conceptual design through construction documents. This project is in a remote part of Nevada where water must be hauled by truck to 4 of the 5 entry stations. Susan designed these landscapes to utilize passive rainwater harvesting techniques in an aesthetic storm water distribution system. Curb cuts are designed to guide natural precipitation into medians in order to irrigate plants, infiltrate storm water, and provide a "water feature." Plants and soil salvaged during construction are reintegrated into the design.



Cultural Landscape Inventories, Grand Teton National Park, Wyoming. Susan shared the responsibilities of research, mapping, and document preparation needed to determine the cultural integrity of the Bar BC Dude Ranch and Jackson Lake Lodge landscape. As one of the area's pioneer dude ranches, the Bar BC helped shaped Jackson Hole's character as a destination for nature-based tourism. This historic ranch is situated in a natural area of great beauty with grand views of the Teton Range. Jackson Lake Lodge also offers a commanding view of Jackson Lake and the Teton Range. It is also the design precursor to the National Park Mission 66 program, which called for the modernization required to meet the needs of increased visitors to the parks.

Belaustegui Park, Battle Mountain, Nevada. Susan led the design of this park from conceptual layout through construction documents. She effectively coordinated with the Nevada Department of Environmental Protection (NDEP), fulfilling the public involvement aspects necessitated by the nature of the project, including presentations to both the local County Commission and City Council. During the mining boom, barite was loaded onto trains in downtown Battle Mountain. Due to the resulting high barite content in the soil, NDEP decided to fund the capping of the site with imported top soil and the design of a park. The park is grounded in the indigenous culture and history of Battle Mountain including the ranching and Basque heritage. Carved linear features that mimic aspen trunks and 100-year old Basque carvings found on the aspen groves of the remote Nevada ranges. It is designed as a community gathering place, gateway for the town, and a rest stop for visitors to experience the stories of the area.



Landscape and Aesthetics Corridor Study, NDOT, Nevada. While at NDOT, Susan worked to promote responsible development and sustainability throughout the highway system. She participated in the public process and managed both projects and consultants. She provided comments and attended public and stakeholder meetings relating to the Landscape and Aesthetics Corridor Study of the road system of Nevada.



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-295
Assembly Meeting Date: 10/8/13

Business Item Description:	Attachments:
Subject: ADOT&PF spraying herbicides & pesticides on state roadways in the Haines Borough	1. Memo from the Mayor, including draft Alaska Conference of Mayors Resolution 2. Rep. Les Gara legislation 3. ADEC's Pesticide Regulation Responsiveness Summary
Originator: Mayor	
Originating Department:	
Date Submitted: 9/25/13; originally 6/17/13	

Full Title/Motion:
Motion: Endorse the herbicides resolution drafted for the Southeast Conference of Mayors and authorize the mayor to vote in favor of adoption.

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:
The mayor has received several requests from residents to consider some way the borough could prevent the utilization of herbicides and pesticides by ADOT&PF along our roadway. The Southeast Conference of Mayor's (ACoM) is meeting via teleconference on October 22 to consider, among other things, a draft resolution on the subject. She would like assembly authorization to vote in favor of adoption. Representative Les Gara has also drafted legislation that his office believes will re-establish public participation in pesticide application on state lands. This legislation is attached to this agenda bill. The ACoM Resolution does not reference the Gara legislation.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 6/25, 8/27, 10/8/13	Tabled to Date:

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 29, 2013

To: Haines Borough Assembly members

Cc: Mark Earnest, Manager;
Julie Cozzi, Borough Clerk

From: Stephanie Scott, Mayor, Haines Borough

Subject: Herbicides: Mayor Request for Assembly endorsement of resolution
re herbicides drafted for the Southeast Conference of Mayors

The Southeast Conference of Mayor's is meeting via teleconference on October 22. I would like your authorization to vote in favor of passage of the draft resolution by the Southeast Conference of Mayors. The draft resolution reads:

WHEREAS, the Southeast Conference of Mayor's was formed to provide Southeast Alaskan communities with a unified voice when addressing issues that impact this region and the state and

WHEREAS, the use of herbicides by the Alaska Department of Transportation along Alaska's roads and highways is a subject of great concern amongst the residents of Southeast Alaska and

WHEREAS, Public and private lands and waterways adjacent to Alaska's roadways provide access to fish, wildlife, berries and many other naturally occurring resources that provide food, economic, lifestyle and cultural benefits to many Alaskans and

WHEREAS, Regulations developed by the Alaska Department of Environmental Conversation and the Alaska Department of Transportation do not provide for public comment on the use of herbicides along Alaska's roadways and public lands

BE IT THEREFORE RESOLVED, that the Southeast Conference of Mayors requests that the regulations covering the use of herbicides along Alaska roadways be amended to provide for public comment

BE IT FURTHER RESOLVED, that the Southeast Conference of Mayors requests

that the Alaska Department of Transportation and the Alaska Department of Environmental Conservation meet with representatives from Southeast communities to discuss the impacts of the use of herbicides along the region's roadways

In order to become more knowledgeable regarding the Department of Environmental Conservation's response to concerns over the removal of the public's right to comment on application of herbicides on state land, I read through DEC's February 5 response to comments. DEC is very confident that it has the authority to make decisions about public lands without either a public notice or comment period:

DEC Response to Comment 88:

"Alaska land managers in various State Departments are entrusted with supervising and making decisions on a wide variety of activities on state land in accordance with relevant statutes and regulations without a public notice and comment period" (page 36, Department of Environmental Conservation Division of Environmental Health, Pesticide Regulation Revision 18 AAC 90, Responsiveness Summary, February 3, 2013).

I believe it is exactly those relevant statutes and regulations that the Southeast Conference of Mayors seeks to address with the draft resolution.

Representative Les Gara has also drafted legislation that his office believes will re-establish public participation in pesticide application on state lands. This legislation is included in your packet. The SE Conference of Mayor's Resolution does not reference the Gara legislation.

If the DEC agrees to meet with representatives from communities as requested in the resolution, I expect that there will be follow-up in terms of suggestions for statutory remedies.

The state will rely heavily EPA certification of pesticides, as described in the DEC response to comments ascribing negative outcomes to pesticide application (See responses to comments 79-84; 116-117; 146; 158). This statement or something quite similar is offered repeatedly:

"...The EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changes. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that the EPA's extensive analysis of each pesticide product is sufficient to protect drinking water sources" (page 32, Department of Environmental Conservation Division of

Environmental Health, Pesticide Regulation Revision 18 AAC 90, Responsiveness Summary, February 3, 2013).

Petersburg Mayor Mark Jensen raises the question of whether or not it is prudent for the State of Alaska to rely so heavily on EPA analysis, given the nature of our ecosystem coupled with how much we rely on it economically and for personal use. Mayor Mark Jensen's August 19, 2013 response to DOT reported new research on glyphosate, which the EPA considers minimally toxic to humans and "safe" for use in aquatic environments.

"Glyphosate, the active ingredient in Roundup, is the most popular hericide used worldwide. The industry asserts it is minimally toxic to humans, but here we aregue otherwise ... Glyphosate's inhibition of cytochrome P45- (CYP) enzymes is an overlooked component of its toxicity to mammals. CYP enzymes play crucial roles in biology, one of which is to detoxify xenobiotics. Thus, glyphosate enhances the damaging effects of other food borne chemical residues and environmental toxins. Negative impact on the body is insidious and manifests slowly over time as inflammation damages cellular systems throughout the body."

In the introduction to the Responsiveness Summary (Feb. 5, 2013) DEC advances an equity-based argument to support removing the obligation to submit its decision re pesticide application to public comment. Since private landowners are not required to get permits to apply pesticides, why should the state? ¹ This is somewhat reminiscent of DEC's argument for allowing cruise ship mixing zones: municipalities have mixing zones, so why shouldn't cruise ships? Both arguments overlook scale. Nearly one-third of the almost 1.5 million acres that comprise the Haines Borough is owned by the State of Alaska. Private land accounts for just 1.3% of the land base.² How the state manages its land in the Haines Borough has impact that far exceeds how private landowners manage their land; just as the volume of effluent delivered into a mixing zone by a cruise ship, far exceeds the effluent that the Haines Borough Water/Sewer Treatment system delivers to its mixing zone. Scope or volume has to be considered when evaluating impact.

¹ "State land managers are required to get permits whereas private land owners are able to apply the exact same products without one. Land ownership is not a risk factor for the use of pesticides;..." (page 5; Department of Environmental Conservation Division of Environmental Health, Pesticide Regulation Revision 18 AAC 90, Responsiveness Summary, February 3, 2013).

² Haines Borough Comprehensive Plan, July 2012, page 3.

HOUSE BILL NO. 201

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Kerttula, Tarr

Introduced: 4/8/13

Referred: House Special Committee on Fisheries, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the application of non-aerial pesticides and broadcast chemicals**
2 **near fish habitat or water for human consumption, and in public places."**

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

4 *** Section 1.** AS 46.03.320(c) is amended to read:

5 (c) A person may not apply a pesticide or broadcast chemical in a public place
6 unless licensed by the department or otherwise authorized under a regulation of the
7 department. The department shall by regulation provide for reasonable public
8 notification **and time for public comment**, including written notice posted on the
9 application site, when pesticides and broadcast chemicals are applied in a public place.

10 In this subsection, "public place" means

11 (1) common areas of an apartment building or other multi-family
12 dwelling;

13 (2) that portion of a government office or facility to which access is
14 not ordinarily restricted to employees; [AND]

1 (3) plazas, parks, and public sports fields; and

2 (4) transportation rights-of-way.

3 * **Sec. 2.** AS 46.03.320 is amended by adding new subsections to read:

4 (e) A non-aerial pesticide or broadcast chemical may not be applied by a
5 public agency under the jurisdiction of the state or used in a state project or program
6 within 150 feet of anadromous or resident fish habitat or within 600 feet of a public or
7 private water source that may be used for human consumption unless licensed by the
8 department under this subsection. The department may not license the use of a non-
9 aerial pesticide or broadcast chemical within 150 feet of anadromous or resident fish
10 habitat or within 600 feet of a public or private water source that may be used for
11 human consumption unless the public is provided with an opportunity for public
12 comment and unless reasonable public notice is given, including written notice posted
13 at the application site, including points of public access, for at least 30 days prior to
14 the commencement of the spray operation, and the department finds that the pesticide
15 or broadcast chemical use will not harm anadromous or resident fish or an anadromous
16 or resident fish habitat and will not harm a public or private water source that may be
17 used for human consumption. The required period for public notice or public hearing
18 may be shortened if the department determines that there is an imminent danger to
19 public health or an emergency that threatens a natural resource of the state that could
20 be prevented or mitigated by the prompt application of a pesticide or broadcast
21 chemical.

22 (f) A non-aerial pesticide or broadcast chemical may not be applied in a public
23 place without posting a written notice at the application site. The notice must be
24 conspicuously posted at each point of customary access to each public place or each
25 portion of each public place and must be at least 8 1/2 by 11 inches and be reasonably
26 designed to remain legible for the longer of 24 hours after the application or the time
27 when entering the application area is safe according to the product label. In this
28 subsection, "public place" means

29 (1) common areas of an apartment building or other multi-family
30 dwelling;

31 (2) that portion of a government office or facility to which access is

- 1 not ordinarily restricted to employees;
2 (3) plazas, parks, and public sports fields; and
3 (4) transportation rights-of-way.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Rebecca Colvin
Solid Waste and Pesticide Program
Division of Environmental Health
Department of Environmental Conservation
555 Cordova St.
Anchorage, AK 99501

July 16, 2012

Re: Supplemental Comment On Pesticide Regulations: Combatting Invasive Species

Dear Ms. Colvin:

I forgot to include this in my prior correspondence on the proposed pesticide application changes. The Department already possesses emergency powers to waive public comment when an emergency exists, including one of an environmental nature. That seems to cover cases where there is an immediate need to combat invasive plant species, which has been the case in the past. If you feel that regulation needs to be broadened, then you should do so for invasive species issues – though it could likely be done with an abbreviated public comment period, and an abbreviated period allowing for quick action afterwards, and I'd ask that you look for ways to allow public comment if possible even in those situations.

But the regulations as proposed are far too broad. They allow, when there is no emergency, a ban on public comments in many unjustified circumstances, such as:

- Spraying on stream banks, that can then leach toxins into fishing streams and lakes
- Spraying uphill of groundwater and residential or other water well supplies
- Spraying in areas the state doesn't realize children frequent, even if it is just children of one or a few families.

Generally, broad restrictions on the public's right to have input into government decisions are a bad idea. As written the current regulations are too broad, and too stifling of public comment.

Thank you for considering this additional comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Les Gara".

Representative Les Gara

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Rebecca Colvin
Solid Waste and Pesticide Program
Division of Environmental Health
Department of Environmental Conservation
555 Cordova St.
Anchorage, AK 99501
Rebecca.colvin@alaska.gov

July 14, 2012

RE: changes to state pesticide permitting regulations, and extension of comment period

Dear Ms. Colvin:

I am writing to express grave concerns about the Alaska Department of Environmental Conservation's (ADEC) proposal to amend the regulations under Title 18, Chapter 90 of the Alaska Administrative Code related to the use of pesticides. As the representative of many constituents who regularly use state lands and Alaska's waterways, as well as being an avid fisherman myself who enjoys Alaska's natural resources, I am very concerned about the potential impacts of the proposed regulation changes.

A primary area of concern is ADEC's proposal to remove the requirement for public participation for spraying that is not aerial-based, directly on water, or on private land. Currently, the public is invited to comment on individual permits. This leaves Alaskans without a voice on pesticide use that can endanger children, kill fish, and otherwise harm the public and our resources.

If the proposed regulations are enacted as proposed, there would be no requirement for public participation in the decision of whether or not to use pesticides because individual permits would no longer be required (with the above exceptions), and there would be no public hearing or opportunity to submit comments or appeal decisions. The public would only be *informed* of decisions to spray, without having had any opportunity to comment. But for the above exceptions, there would not even be a requirement that written notice be posted at the application site.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

I believe Alaskans should have a right to comment on important state issues. Elimination of a public commenting process by a state agency is always cause for concern, and when the public process pertains to human health and safety, the action is particularly disconcerting. Without a requirement for individual permits, there would be no requirement for applicator agencies to submit applications, and as a result, no requirement for ADEC to accept public comment, evaluate, establish mitigating measures, or authorize, by permit or otherwise, specific spraying proposals. As a result there would be no opportunity for the public to inform ADEC or an applicator agency of places used by the public that should fall within no-spray zones.

While the development of an Integrated Pest Management plan (IPM) would seem to alleviate the need for the application, award, and notification of individual permits, the IPM itself would not even be subject to a public process. The IPM would contain several useful items, including preventive methods used, monitoring of the presence of pests, thresholds for allowable pest presence, etc., but the public would have no input as to whether waterways and right-of-ways that they access would be sprayed, and if sprayed, what kind of chemicals would be used. And, while the applicator agency would be required to post the IPM on "the department's" website, ADEC is not required to review or approve the IPM. While an Integrated Pest Management plan might effectively eradicate pests, its requirements seem woefully inadequate in terms of addressing risks to human health and the environment.

State lands are public lands, which the public owns and uses. Often the public must use state lands and right of ways to access private land and recreational areas, and under the proposed regulations, the public would potentially be exposed involuntarily to toxic chemicals. Since the public owns state lands, it maintains a fundamental right to participate in agency decisions regarding how its lands are to be used. The mission of the Alaska Department of Environmental Conservation is to conserve, improve, and protect Alaska's natural resources and environment to enhance the health, safety, economic and social well-being of Alaskans. ADEC should not be reducing or eliminating its role in the decisions of whether or not to spray on state lands and what chemicals should or should not be allowed to be used. If anything, it should be enhancing its roles in order to fulfill its duty to protect human health. The Alaskan public has been very clear in the past that it does not want the spraying of pesticides to become standard operating procedure, thus pesticide spraying should absolutely remain part of the public process.

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

It is also my understanding, based on the proposed components of the IPM in the regulatory changes, that there would not be requirements:

- To identify water bodies or private water wells or other private water sources located in close proximity to a spray area.
- To identify and describe the type of pesticide and formulation to be used.
- To analyze soil types and drainage characteristics in the treatment area.
- That mandate review by other agencies, such as the Department of Fish and Game.
- That impose no-spray buffers to water bodies or private wells or other private water sources.
- That require ADEC to control or regulate the types and toxicities of pesticides being used.

I strongly urge you to reconsider the proposed regulations, maintain a public commenting process, and ensure that human health will be protected.

I also respectfully request that you consider a sixty day extension of the current public comment period, currently running from May 22 to August 2, in regards to how pesticides and toxics in Alaska are regulated. Summer is a busy time for most Alaskans, including fishermen and tourist-related workers, and this issue is obviously an important public health issue.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Les Gara", with a long horizontal line extending to the right.

Representative Les Gara

**Department of Environmental Conservation
Division of Environmental Health**

**Pesticide Regulation Revision
18 AAC 90**

**Public Noticed
May 23, 2012 – August 2, 2012**

**RESPONSIVENESS SUMMARY
February 5, 2013**

Acronyms and Abbreviations

AAC	Alaska Administrative Code
AS	Alaska Statute
DEC	Alaska Department of Environmental Conservation
EPA	United States Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
UAF	University of Alaska - Fairbanks
USDA	United States Department of Agriculture

INTRODUCTION

Summary of Project

The Department of Environmental Conservation (DEC) seeks to adopt regulation changes to Title 18, Chapter 90 of the Alaska Administrative Code (18 AAC 90). The proposed changes address pesticide-use permits on state owned lands and right-of-ways, including the following:

- (1) Changes to the process state land managers must follow when applying pesticides by adding new sections:
 - 18 AAC 90.640 requires agencies managing state land to develop an Integrated Pest Management Plan;
 - 18 AAC 90.645 identifies the information that needs to be contained in an Integrated Pest Management Plan; and
 - 18 AAC 90.650 requires agencies managing state land to identify a person in charge to ensure an Integrated Pest Management Plan is developed and followed.

- (2) Clarification of 18 AAC 90.500 so that an individual permit for pesticide application is necessary if a government entity is applying pesticides on more than one privately owned property, but not for land applications on state owned property such as right-of-ways.

Opportunities for Public Participation

The 72 day public comment period for the proposed regulation changes began on May 23, 2012, when DEC published notice in the Anchorage Daily News. The public comment period ended on August 2, 2012. Publication included information about the proposed changes and the opportunity to submit comments. DEC also posted the public notice online at www.state.ak.us/dec/eh/pest and www.dec.state.ak.us/public_notices.htm.

DEC sent informational packets by e-mail or US Postal Service to interested parties, including previous permit applicants, invasive weed management groups, other members of the regulated community, and members of the general public who had previously commented on, or expressed an interest in being notified of, pesticide related issues. Packets included a “Dear Interested Party” letter, a fact sheet about the proposed regulations changes, a Public Notice for the regulations revision, and a copy of the proposed regulation revisions.

DEC received a number of requests to extend the public comment period. DEC denied those requests because the comment period was already significantly longer than the required minimum of 30 days, and provided an ample amount of time for individuals to submit meaningful comments. Each extension request was responded to in writing.

DEC also received a number of requests for a public hearing on the regulation changes. Chapter 44, Section 62 of the Alaska Statutes (AS 44.62), contains laws regarding the process for revising regulations. AS 44.62 leaves the issue of public hearings to the department’s discretion. DEC determined that public hearings on these regulation changes would not add meaningful

public input beyond that which is collected through public comments, therefore hearings were not warranted.

Decision Process and Purpose of Responsiveness Summary

DEC received 147 written comments on the regulation revision, and reviewed each comment. The purpose of this document is to summarize and respond to comments received during the public comment period.

The following pages provide information about DEC's decision process, a summary of the comments that were submitted by one or more individuals during the public comment period, and DEC's response to those comments.

BACKGROUND INFORMATION

Pesticide Product Registration Process

Before manufacturers can sell pesticides in the United States, the Environmental Protection Agency (EPA) evaluates the pesticides thoroughly to make sure they can be used without posing harm or "unreasonable adverse effects" to human health or the environment.

Pesticide products must undergo rigorous testing and evaluation prior to registration approval. EPA scientists and analysts carefully review data to determine whether to register a pesticide product, and whether specific restrictions are necessary. EPA uses internal and external reviews involving peers and the public through a comment process when conducting these evaluations.

The scientific data requirements for product registration are very detailed. Required data includes characterizations of the pesticide's chemistry and manufacturing process; mammalian and ecotoxicology; environmental fate; residues in or on human and livestock food or feed crops; applicator, occupational, and bystander exposures; product efficacy; and incident reports. Registrants can be required to conduct and submit up to 100 or more individual scientific studies for the registration of a new pesticide.

By definition, all pesticides are toxic to some degree. The level of risk from a pesticide depends on how toxic or harmful the substance is, and the likelihood of people coming into contact with it. Uncertainty factors are built into the risk assessment. These factors create an additional margin of safety for protecting people who may be exposed to the pesticides.

In order for a pesticide to be registered, the EPA must determine that the product can be used as labeled without causing unreasonable adverse effects to humans or the environment. If risks or concerns are identified, appropriate risk mitigation measures are required. These are implemented through product label requirements, which may include reductions in application rates, restrictions to approved sites or commodities, advisory statements, implementation of specific management practices, and other restrictions or limitations designed to mitigate risk.

The proposed product label must provide the active pesticide ingredients, application directions, use restrictions, and warnings. This label information is based on the underlying scientific data and conclusions about potential hazards, exposures, and risks from use according to the label.

EPA also conducts regular reassessments of currently registered pesticides. Through this re-registration program, EPA assesses new scientific studies and information about registered products. If there is new evidence documenting unreasonable risk to human health and the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed.

If new information or studies show that a pesticide represents an unreasonable risk even after a change of allowable usage, EPA has the authority to cancel registration of products containing that pesticide. Whenever EPA determines there are urgent human and environmental risks from pesticide exposures that require prompt attention, EPA will take appropriate regulatory action, regardless of the registration review status of that pesticide.

EPA's extensive analyses of each pesticide product, and incorporation of new scientific data regarding safety and use of existing products, is sufficient to protect human health and the environment from unreasonable adverse effects. The EPA evaluation and registration process is sufficient to ensure no unreasonable adverse effects should be expected from labeled use of registered pesticides.

Although perception of risk varies widely between different individuals, determination of actual risk must be based on scientific data. The EPA label review process does a thorough, science-based analysis of risk, and is the best available tool for determining how pesticides can be safely used.

Current Pesticide-Use Permit Requirements

General use pesticides, such as surface sanitizers, rodent bait, weed and insect killers, are available for sale at almost any grocery or home improvement store. These products are widely and safely used across the state.

Under the current pesticide-use permit system, a permit is required for all applications of pesticides on state owned lands, even when using minute amounts of products that are readily available over the counter to homeowners. Requiring a permit simply based on the fact that it is a state agency doing the pesticide application is not a process that reflects relative risk to human health or the environment in using the pesticides.

The extensive analysis required to satisfy the current permitting regulations on state-owned lands duplicates the work done during the EPA label review. DEC does not believe that there is a significant environmental or public health benefit derived from this detailed case-by-case analysis.

Rather than spending considerable time reviewing permit applications based solely on the fact that pesticide will be applied to state owned lands, DEC believes that its role should be to review permit applications where there might be increased human health or environmental risk, such as

in applications to water or applications using aerial methods of distribution. Note that certain pesticides are classified as “restricted use” pesticides. These pesticides are not sold over the counter and must be applied under supervision by a certified pesticide applicator. By eliminating the need to spend resources and time reviewing permit applications required solely because the land is state-owned, DEC can better focus on true risk factors to human health and the environment.

The permitting process is extremely complex and lengthy, and creates an enormous burden for state land managers and the DEC Pesticide Program that is not commensurate with the risk related to the activity. State land managers are required to get permits whereas private land owners are able to apply the exact same products without one. Land ownership is not a risk factor for the use of pesticides; as long as the label instructions and other regulatory requirements are followed, pesticide use should be safe for both public health and the environment. Requiring state agencies to obtain permits for these types of pest control activities on state land is time consuming, costly, and does not result in increased safety or protectiveness. Other states do not require permits for this type of activity. The complexity of obtaining a permit is impairing the state’s ability to control pests timely or effectively, including invasive species. These are all compelling reasons to initiate a change in pesticide permitting requirements.

Proposed Changes to Pesticide-Use Requirements

To improve the ability to control pests in Alaska, the department proposes to replace permit requirements for pesticide use on state lands with the establishment of criteria in regulation, the Integrated Pest Management (IPM) Plan that must be followed before pesticide applications can occur on state owned lands. This is a pro-active method that will ensure safe pest control rather than the reactive method currently used when an agency applies for a permit from the department after a pest is well established and chemical control is the only viable option.

Individual permits will still be required in Alaska pesticide control regulations for applications to water or by air. Permits are required regardless of the land ownership for these types of applications because the increased risk of harm to public health and the environment warrants closer review to ensure unreasonable adverse effects will not occur as a result.

For land applications, the proposed criteria will require state land managers to determine the acceptable level of pest presence, take measures to prevent or deter pests, and consider nonchemical methods in addition to pesticides. Only trained and certified pesticide applicators will be authorized to apply pesticides on state owned lands. Agencies will be required to notify the public before pesticides are used and share their IPM Plans on the department’s website. The proposed changes will require the identification of a person in charge to implement the IPM Plan and make sure it is followed.

DEC believes that the proposed changes will result in more effective pest management, more timely response to emerging pest issues, elimination of the expense and time caused by cumbersome permitting requirements that are not commensurate with risk associated with the activity, and most importantly, continued assurance that pesticides are safely used.

RESPONSE TO COMMENTS

COMMENTS ON THE REGULATIONS CHANGE PROCESS

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1. Comment Summary:

The DEC public comment period for these rule changes was inadequate.

- DEC did not provide enough time to respond to such large changes.
- People are too busy in the summer months to provide comment.
- DEC did not publish notice in my local paper.
- The process does not provide enough opportunity for public involvement.

Response:

Modifications to regulations are conducted in accordance with the requirements of AS 44.62 and the State of Alaska Department of Law's *Drafting Manual for Administrative Regulations*.

The comment period was 72 days long, significantly longer than the required minimum of 30 days. This provided an ample amount of time for individuals to provide meaningful comments, regardless of season.

The public notice must be published and distributed according to the requirements of AS 44.62.190(a), which requires publication of the notice in a newspaper of general circulation. This requirement was met by posting public notice in the most widely circulated newspaper for the state, the Anchorage Daily News.

In addition, DEC posted the public notice on the DEC website in two separate locations; the main public notice page and the Pesticide Program public notice page.

DEC also sent informational packets by e-mail or US Postal Service to interested parties, including previous permit applicants, invasive weed management groups, other members of the regulated community, and members of the general public who had previously commented on, or expressed an interest in being notified of, pesticide related issues.

DEC is satisfied that all affected parties had sufficient opportunity to become informed about the proposed regulation changes, and provide comments to DEC.

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2. Comment Summary:

DEC's representative in the Attorney General's office would not discuss regulations changes or participate in round-table group discussions.

Response:

The Attorney General's Office does not offer public legal advice or postulate on how draft wording in proposed regulations may or may not be interpreted if ever adopted. It is the role of DEC to discuss proposed regulations changes with the public, as was done in this case.

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3. Comment Summary:

Comments by private citizens and property owners should be given more weight because they have a genuine interest and stake in the regulations changes. Government employees have a conflict of interest because their jobs and workloads are impacted by the regulations changes.

Response:

In accordance with AS 44.62.210(a), DEC must consider all factual, substantive, and other relevant comments received.

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4. Comment Summary:

Any additional changes to the proposed regulations would require an additional public comment period.

- DEC should provide a second public comment period after proposed regulations have been modified in response to first comment period.
- Proposed changes cannot be reverted back to the original language without holding an additional public comment period.
- Why were the Soil and Water Conservation Districts told that proposed changes could be reverted back to the original language?

Response:

In accordance with AS 44.62.200(b), DEC may make modifications and clarifications of the proposed regulations provided during the public notice without holding an additional comment period. Retaining the existing regulation is also allowable.

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5. Comment Summary:

There were several comments on the DEC fact sheet on the rule changes:

- The fact sheet was the principal source of information on the regulation changes.
- It was oversimplified, misleading, and did not accurately characterize the changes to the Pesticide Control Program.
- It did not clearly state that permits would no longer be required,
- It did not clearly state that public comment periods would no longer be required.
- It did not clearly state that identification of water bodies and drinking water sources would no longer be required or protected.

Response:

DEC strives to ensure that all interested parties have the information needed to become informed about the proposed regulation changes and be able to provide comments. The proposed regulations, in addition to other required documents, were available on-line and were provided to interested parties.

The DEC fact sheet on the proposed regulations changes was provided as additional information; its development and distribution were not required. The intent of the fact sheet was to help

explain the proposed changes by providing a brief summary which compared the existing requirements to those proposed.

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6. Comment Summary:

There were several comments on the term 'Permit by Rule', used in the DEC fact sheet on the rule changes:

- The term 'Permit by Rule' was never defined.
- The phrase 'Permit by Rule' is misleading because permit-by-rule is intended for low impact or low risk activities, which shouldn't apply to pesticides.
- The phrase 'Permit by Rule' is misleading because there would be no permits - spraying would be pre-approved.

Response:

The term 'Permit by Rule' is widely used in describing environmental regulations where an activity is authorized based on compliance with set regulatory requirements. In the 'Permit by Rule' process, individual permits are not issued. Rather, certain types of standard practices, which must comply with a set of requirements and regulations, are approved without requiring individual analysis and evaluation.

The proposed regulations require development of an IPM Plan, establishment of a "Person in Charge", notice of intended pesticide applications, and compliance with additional requirements, which is the essence of the term 'Permit by Rule.' The use of this term in the fact sheet was intended to provide explanation of how the proposed changes would work.

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7. Comment Summary:

There were several comments on the copy of the proposed regulations revisions that was provided during the public comment period:

- The regulation amendments document does not provide a redline/strikeout version that would clearly show the wording changes.
- The format was intentionally designed to make it more difficult for the public to review the changes.
- It is very difficult to find the current regulations for comparison.

Response:

DEC strives to ensure that all interested parties have the information needed to become informed about the proposed regulation changes and be able to provide comments.

The proposed regulations were provided in the format required by the State of Alaska Department of Law's *Drafting Manual for Administrative Regulations*. This manual provides specific instruction on how to document changes to regulations, and DEC is required to use this format when presenting proposed regulations changes.

Current regulations are available at any time online at the DEC website. DEC will also provide a printout of the regulations whenever requested.

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8. Comment Summary:

The public notice related to the regulations revision is misleading because it says the regulation changes are intended to ‘clarify’ permit requirements, but does not state it intends to eliminate permit requirements.

Response:

The public notice included the statement, “Clarifying 18 AAC 90.500 so that an individual permit for pesticide applications is necessary if a government entity is applying pesticides on privately owned land, but not for land applications on state owned property such as rights-of-way.” This statement adequately conveys the proposed changes to pesticide permitting requirements.

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9. Comment Summary:

The public process for these regulation changes is not legitimate because the supporting information (fact sheet, public notice, regulation amendment document) are inadequate and obscure essential information.

Response:

The public process was conducted, and supporting documentation was developed, in accordance with the requirements of AS 44.62 and the State of Alaska Department of Law’s *Drafting Manual for Administrative Regulations*.

DEC is satisfied that all affected parties had sufficient opportunity to become informed about the proposed regulation changes, and provide comments to DEC.

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10. Comment Summary:

Why didn't DEC provide the public with a copy of an example IPM Plan, as it did with the Soil and Water Conservation Districts?

Response:

DEC has numerous documents, examples, and resources available, and provides these upon request. In this case, the Soil and Water Conservation Districts made a specific request for an example of an IPM Plan, and DEC provided a generic example that was on hand. It was not part of the official regulations package, and did not contain any information that would provide additional explanation of the proposed regulations. Example IPM Plans that would comply with the proposed regulations are also available from numerous on-line sources.

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COMMENTS ON CURRENT PERMIT PROCESS

Under current regulation, a pesticide-use permit is required to apply pesticides to state owned land (greater than one acre), or state owned right-of-ways. The permitting process takes a

minimum of 100 days, and includes a public comment period as well as a minimum 40 day period between issuance of the permit and when the permit becomes valid.

11. Comment Summary:

The current permit requirements for state owned land in Alaska are overly stringent and are not required in other states. Herbicides have been used on right-of-ways for over 50 years.

Response:

DEC agrees with this statement. The lack of equity of the current regulations as they pertain to state-owned land was a factor in DEC's decision to propose these changes.

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12. Comment Summary:

The current permitting system ties up resources more appropriately used for other aspects of pesticide regulation.

Response:

DEC agrees with this statement. The current permitting system requires significant resources, and provides negligible environmental or public health benefit as a result.

13. Comment Summary:

The current permitting process inhibits the ability of state land managers to control pests.

- The process is too complex and difficult for most land managers.
- There are significant delays (averaging 8 months) to obtain a permit.
- It takes so long to get a permit that the approval is too late to apply herbicides during that season.
- Due to the difficulty of obtaining a permit, invasive weeds are not being adequately treated and controlled. This can cause impacts to natural and agricultural resources.
- Due to the difficulty of obtaining a permit, less effective control methods are used, which can impact public safety along roadways, or can lead to spread of invasive species.
- Due to the difficulty of obtaining a permit, less effective and/or more expensive control methods are used, which can, in the long run, lead to the increased need to use more herbicides over a larger area.
- The Division of Agriculture is unable to treat plant diseases in a timely manner.
- The permitting process is very costly and requires extensive staff time.
- Appeals and lengthy court battles hinder the ability of state land managers to control pests.

Response:

DEC recognizes that the time-intensive process of permitting can delay the ability to respond to pest issues, and that there may be negative repercussions as a result of this delay, with negligible human health or environmental benefit.

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14. Comment Summary:

The current regulations require permits on state lands, but a permit is not required to apply pesticides to federal, tribal, or most private lands.

- The current requirements are inequitable.
- The current requirements are inconsistent.
- The public or private status of a landowner is not a risk factor related to the application pesticides.

Response:

The lack of equity of the current regulations as they pertain to state-owned land was a factor in DEC’s decision to propose these changes. The permitting process is extremely complex and lengthy, and creates an enormous burden for state land managers and the DEC Pesticide Program that is not commensurate with the risk related to the activity.

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COMMENTS ON PROPOSED CHANGES TO PERMIT REQUIREMENTS
[18 AAC 90.500]

The current regulations require a government entity (state, borough, or city) to obtain a permit if the pesticide application "affects property owned separately by two or more persons" [18 AAC 90.500(2)].

The public notice version of the proposed regulations would have required a government entity (state, borough, or city) to obtain a permit if the pesticide application was "intended to apply pesticides to private property" [18 AAC 90.500].

In response to concerns raised in public comments, DEC has modified this section so that it reflects the terminology of AS 46.03.330(b), thus retaining the requirement that a permit is required for a government entity (state, borough, or city) initiating a public pesticide program or project that affects property owned separately by two or more persons. In addition, the term “government entity” has been replaced with the term “the state or a borough or city of any class”, as specified within the definition of “public pesticide program or project” under 18 AAC 90.990(46).

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15. Comment Summary:

The proposed revisions are a drastic change and have unintended consequences:

- The original requirement was for a permit for projects that would apply pesticides to two or more private properties, such as community-wide pest control. Under the new regulations, a permit will be required for essentially any government pesticide use on private property.
- Possible unintended consequence is there will now be a requirement for a permit even if only working with one private property.
- Many agencies work with private landowners to address invasive plant management. This change will increase the number of permits required under these circumstances.

- Who will pay for the increase in the number of permits required as a result of this change?
- The proposed regulations would require all state agencies and Soil and Water Conservation Districts to get a permit for virtually any application of pesticides.
- This section should retain the original language related to private property.

Response:

DEC recognizes that the proposed changes to this section had unintended consequences. DEC has modified this section so that it reflects the terminology of AS 46.03.330(b), thus retaining the requirement that a permit is required for a government entity (state, borough, or city) initiating a public pesticide program or project that affects property owned separately by two or more persons.

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16. Comment Summary:

The change from “affects property” to “intended to apply” is significant.

- The proposed changes severely reduce the requirement for permits. Applications that are specifically ‘intended to apply’ pesticides to a property affects only those applications directly to the property. Any nearby application might “affect” a property through drift or pesticide migration.
- Private property owners would have no way to object before pesticides were “unintendedly” applied to their land. Their lands could be affected through drift or leaching, and as long as it wasn't “intended”, this regulation would not apply.

Response:

The proposed changes to this section had unintended consequences. DEC has modified this section so that it reflects the terminology of AS 46.03.330(b), thus retaining the requirement that a permit is required for a government entity (state, borough, or city) initiating a public pesticide program or project that affects property owned separately by two or more persons.

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17. Comment Summary:

This change will ensure more careful application on private property.

Response:

Because DEC decided to retain the original requirement, there will be no difference in application of pesticides on private property than prior to the proposed changes.

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18. Comment Summary:

Government agencies should be required to get landowner permission before applying pesticides to private property.

Response:

Landowner permission is required before any pesticide applications may be made to any property.

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19. Comment Summary:

State agencies don't apply pesticides to private property and probably cannot do so legally, so this is meaningless.

Response:

State agencies do apply pesticides to private property under some circumstances; landowner permission is required, and, in some cases, a pesticide-use permit.

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COMMENTS ON INTEGRATED PEST MANAGEMENT PLANS [18 AAC 90.640(a)(1)]

Under the proposed regulations, application of pesticides to state owned lands or right-of-ways are authorized if the pesticide use follows a written Integrated Pest Management (IPM) Plan.

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20. Comment Summary:

The IPM Plans should have to undergo an evaluation and approval process by DEC.

Response:

DEC does not believe that evaluation and approval of IPM Plans would add significant environmental or public health benefit. In the event that land managers use pesticides under an IPM Plan, they must comply with all pesticide requirements, including use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations. DEC will conduct compliance and enforcement activities to ensure that these requirements are complied with, and that pesticides are safely applied and used.

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21. Comment Summary:

The proposed regulations do not establish any performance standards for the IPM Plan to ensure that they are accurately or adequately completed.

Response:

Proposed regulations under 18 AAC 90.645 provide specific information that must be included in each IPM Plan. In conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations, these requirements are sufficient to ensure pesticides are safely applied and used.

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22. Comment Summary:

Do other states review and approve IPM Plans?

Response:

DEC is not aware of any IPM Plan requirements in other states for general pesticide applications. A number of states do require IPM Plans for use in schools; DEC is not aware of any regulations requiring review or approval of these IPM Plans.

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COMMENTS ON PUBLIC NOTIFICATION AND POSTING [18 AAC 90.640(a)(2), 18 AAC 90.640(a)(5), 18 AAC 90.640 (b)]

Under the proposed regulations there are a number of provisions to provide notice to the public regarding pesticide applications on state owned land. In addition to publishing the IPM Plan on the DEC website, the following notice/posting requirements must be met:

- Comply with posting and notification requirements for schools under 18 AAC 90.625;
- Comply with posting requirements for public places under 18 AAC 90.630; or
- Publish public notice in a newspaper 30 days prior to application.

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23. Comment Summary:

Under the proposed regulations, public notification and posting of IPM Plans to DEC’s website are sufficient:

- This will help keep both DEC and the public informed of pesticide programs and specific applications.
- The proposed regulations ensure adequate public notice.

Response:

DEC agrees that both DEC and the public will be informed on these IPM Plans through this posting requirement.

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24. Comment Summary:

Under the proposed regulations, public notification about pesticide projects on state lands is not sufficient:

- The public has a right to know when and where pesticides are used.
- The proposed regulations eliminate public notice about pesticides use.
- Posting notice in a newspaper and posting the IPM Plan on the DEC website will not ensure that potentially affected people will be made aware of pesticide applications.
- Not everyone has internet access to check for IPM Plans.
- Publishing the IPM Plan on the DEC website is not adequate to notify everyone who might need this information.
- The public will not have any way of knowing where pesticides have been applied, and can be involuntarily exposed to toxic chemicals.

Response:

DEC believes that the public notification requirements for pesticide use on state-owned lands included in the proposed regulations are adequate for notification. Most applications of

pesticides, including widespread use on federal lands and private property, do not require any public notification.

25. Comment Summary:

To ensure that people are notified of pesticide spraying, DEC should require a different public notification process. DEC should:

- Post the notice on the DEC website.
- Maintain an e-mail list of interested parties, and contact them any time spraying will be conducted on state land.
- Require direct notification by telephone or mail to all residents near a spray area.
- Maintain an RSS feed to provide updates to changes on websites related to pesticide spraying.
- Require radio announcements about pesticide spraying.

Response:

DEC believes that the public notification requirements for pesticide use on state-owned lands included in the proposed regulations are adequate.

26. Comment Summary:

The proposed regulations require publication of notice in a newspaper of ‘general circulation in the affected area’ is not sufficient to notify the public [18 AAC 90.640(b)].

- Posting notice in a newspaper is insufficient since people do not read newspapers, and do not read the notices section.
- Many communities and remote areas of Alaska do not have a newspaper. This section should allow for an alternative place for posting.

Response:

Publishing notice in a newspaper of ‘general circulation in the affected area’ meets legal requirements for public notification. A consistent alternative posting place that would be possible in each location would be difficult to define. However, IPM plans and other information will be available on-line.

27. Comment Summary:

Publishing notice in a newspaper can be costly.

Response:

Publishing notice in a newspaper of ‘general circulation in the affected area’ meets legal requirements for public notification. Publishing notice in a newspaper was also required under permit requirements in the current regulations for the applicant, so this requirement will not pose any additional cost compared to current requirements.

28. Comment Summary:

Publishing notice in a newspaper at least 30 days in advance of applying pesticides may be difficult to manage for right-of-ways that cover large areas, when application may be spread out over a longer period.

Response:

Notice must be published at least 30 days in advance of beginning the first pesticide application in a pesticide project.

29. Comment Summary:

The information required to be in the public notification about pesticide projects on state lands is not sufficient under the proposed regulations:

- 18 AAC 90.640(b)(2) states that the notice must include information on the ‘pesticides to be used’. This is too vague. This subsection should require that the complete product name and the EPA registration number must be posted.
- This section should address whether notification will be required if there is a change in the pesticide program.
- This section should require information about the specific dates and times when pesticides will be applied.

Response:

The regulations have been modified since the public notice version of the regulations to specify that information in public notices must include the complete product name and EPA registration number.

18 AAC 90.640(a)(1) and 18 AAC 90.650(2) will require compliance with the IPM Plan as written. Furthermore, in accordance with 18 AAC 90.640(d)(2), any significant changes to the pesticide program or project would require notification under 18 AAC 90.640(a)(3) and (a)(6), and public notice under 18 AAC 90.640(b).

Since pesticide application timing depends on a number of variables including weather, pest presence and development, and other factors, it is not possible to determine which specific date and time would be appropriate for application far enough in include this information in the published notification.

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30. Comment Summary:

Section 18 AAC 90.640(c) states that notice of multiple applications must be provided pursuant to (a)(2) and (b). This appears to be a typographical error, since 18 AAC 90.640(a)(2) does not relate to notice.

- This section should be corrected to refer to subsections (a)(3) and (b).
- This section should include a full citation including section number to ensure clarity.

Response:

The citation error has been corrected to refer to the correct subsections, which include (a)(3) and (b), and to reference "this section", as required by the State of Alaska Department of Law’s *Drafting Manual for Administrative Regulations*.

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31. Comment Summary:

Public notice requirements under 18 AAC 90.630 (requirements for posting notices at the application site at public places) remain unchanged.

Response:

This is correct.

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32. Comment Summary:

On-site posting about pesticide projects on state lands is not sufficient under the proposed regulations:

- The definition of public place is not broad enough. Many places that are regularly utilized by the public, such as trails and roadways, do not meet the definition of a public place. The additional posting and notification requirements for public places should apply to these places since they are regularly utilized by the public, especially children.
- Signs should be posted at the application site for all state owned land pesticide use, the same as is required for applications to schools and public places.
- Signs should be posted on the perimeters of any spray area for several weeks before and after spraying.

Response:

Most applications of pesticides, including widespread use on private property, do not require posting or public notification. The proposed regulations do require notice to be published in a newspaper prior to application of pesticides on state lands. However, 18 AAC 90.630, which requires notification signs to be posted at access points prior to application of pesticides, applies only to areas which meet the definition of a public place.

For the purposes of pesticide regulation, Alaska Statute 46.03.320(c) defines a public place as

- (1) common areas of an apartment building or other multi-family dwelling (building that includes more than four single-family dwellings);
- (2) that portion of a government office or facility to which access is not ordinarily restricted to employees; and
- (3) plazas, parks, and public sports fields.

There are locations on state lands that the public utilize which do not fit this definition of a public place. In many of these areas there are no specific "access points", and they may encompass large areas of land. Except for "public places" as currently defined, posting for all other state land is impractical.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

COMMENTS ON NOTIFICATION TO DRINKING WATER SYSTEMS
[18 AAC 90.640(a)(3)]

Under the proposed regulations, public drinking water systems within 200 feet must be given 30 days notice before application to state owned land or right-of-ways.

33. Comment Summary:

This is a good measure to ensure the public will be informed.

Response:

Thank you for your comments.

34. Comment Summary:

This section should specify the information that must be included in the notification.

Response:

Drinking water systems will be able to access posted IPM Plans to obtain information relating to pesticide application. Therefore, simple notification that the activity will occur is sufficient.

35. Comment Summary:

This section should address whether notification will be required if there is a change in the pesticide program.

Response:

18 AAC 90.640(a)(1) and 18 AAC 90.650(2) will require compliance with the IPM Plan as written. Any significant changes to the IPM Plan would require revised notification under 18 AAC 90.640(a)(3).

36. Comment Summary:

Private drinking water sources should also be notified prior to pesticide application.

Response:

There is no practical method to identify private drinking water sources near an area. However, the public notice requirement of 18 AAC 90.640(b) will provide notification for individuals with private drinking water sources. In addition, compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands, and do not impact drinking water sources.

37. Comment Summary:

This section refers to public drinking water systems, "as defined in 18 AAC 80". This is an incomplete citation.

Response:

Public water systems are specifically defined under 18 AAC 80.

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COMMENTS ON REQUIREMENT FOR CERTIFIED APPLICATORS [18 AAC 90.640(a)(4)]

Under the proposed regulations, application to state owned land or right-of-ways must be made by a certified applicator.

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38. Comment Summary:

The requirement for applications to be made by a certified applicator is too stringent:

- Requiring each person applying pesticides to be certified is an unnecessary burden. Supervision by a certified applicator is sufficient to ensure safe application.
- This subsection should be amended to read, “pesticide will be applied **or supervised** by an applicator certified by the department.”
- Current permit requirements allow for applications to be supervised by certified applicator.

Response:

DEC feels that this measure helps ensure that pesticides will be applied and used in a safe manner.

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39. Comment Summary:

Requiring a certified applicator will help ensure compliance with requirements and safe handling.

Response:

DEC feels that this measure helps ensure that pesticides will be applied and used in a safe manner.

=====

40. Comment Summary:

The regulation should require the applicator to provide evidence of proper certification, including name and license number.

Response:

DEC conducts observations and inspections of applications to state lands, as it does for commercial applications, to ensure compliance with all pesticide regulations.

=====

COMMENTS ON REQUIREMENT TO NOTIFY DEC [18 AAC 90.640(a)(6)]

Under the proposed regulations, DEC must be notified 15 days prior to application of pesticides to state owned land or right-of-ways.

41. Comment Summary:

This will help keep both DEC and the public informed of pesticide programs and specific applications.

Response:

Thank you for your comments.

42. Comment Summary:

This section should specify the information that must be included in the notification, including location, purpose, formulation, applicator, application method, amount, and application rate.

Response:

DEC will be able to access posted IPM Plans to obtain information relating to pesticide application. Therefore, simple notification that the activity will occur is sufficient.

43. Comment Summary:

Notice should be required to be in writing.

Response:

Written notification is not required. However, the Person in Charge will be required to maintain a written record of notifications, as required by 18 AAC 90.640(a)(7).

44. Comment Summary:

Fifteen days is not an adequate amount of time for DEC to take any actions, if needed.

Response:

The 15 day prior notice allows DEC the opportunity to plan for inspection of the application of the pesticide. It also allows DEC sufficient time to verify the registration status of pesticides proposed for use, the certification status of individuals proposed to apply pesticides, and the ability to ensure that the applicant has a complete Integrated Pest Management Plan. DEC has sufficient authority under 18 AAC 90.705 to stop the use of the pesticide if it determines that the individual or agency applying the pesticide is out of compliance with applicable portions of 18 AAC 90.

45. Comment Summary:

This section should be changed to read that DEC must be notified at least fifteen days in advance. Since pesticide application timing depends on a number of variables including weather, it would be very difficult to precisely determine the exact application date this far in advance.

Response:

This correction has been made.

46. Comment Summary:

The proposed regulations specify that this notification is required on "a parcel of land one acre or more in size". This should be modified to an application area of one acre or more in size, since most parcels of land are greater than one acre in size. As written, this would effectively require notification for all applications, even spot applications

Response:

This clause will be deleted, as it duplicates the requirements for size of application area specified in 18 AAC 640(e) [Note, the commenter was referring to 18 AAC 90.640(d) in the public notice draft – this section has been renumbered in the final regulations document to 18 AAC 90.640(e)].

47. Comment Summary:

This section should be changed to read "in advance of a first (if multiple) applications".

Response:

The language in 18 AAC 90.640(c) has been modified to indicate how to handle notification for multiple application projects, and meets the intent of this suggestion.

COMMENTS ON RECORDKEEPING REQUIREMENTS DEC [18 AAC 90.640(a)(7)]

Under the public notice version of the regulations, the land manager would have had to maintain a record of pesticide use and notification for five years.

In response to concerns raised in public comments, DEC has modified this section to reflect requirements of 18 AAC 90.415, including the two year record retention requirement.

=====
48. Comment Summary:

There are existing recordkeeping requirements under 18 AAC 90.415 which require records of pesticide applications to be kept for two years. The proposed regulation would require records of pesticide applications made under IPM Plans to be kept for five years.

- The increase from two years to five years is not warranted. This subsection should be deleted.
- Records retention requirements should be consistent with existing requirements. This subsection should be deleted.
- Increasing the period of records retention is an additional burden, but may be justified because it allows DEC to determine when and where an application occurred, and details about type and volume of application.

Response:

In order to retain consistency with other record keeping requirements, this section has been modified to reflect requirements of 18 AAC 90.415, including the two year record retention requirement.

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49. Comment Summary:

This section should refer to the Person in Charge, as established under 18 AAC 90.650, instead of land manager.

Response:

This correction has been made.

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50. Comment Summary:

This section is too vague, and doesn't explain what is meant by "record of pesticide use and notification";

- This section should specify the information that must be included in the records
- Records should include location, purpose, formulation, applicator, application method, amount, and application rate.
- This section should specify the format that records must be kept in.

Response:

In order to retain consistency with other record keeping requirements, this section has been modified to reflect requirements of 18 AAC 90.415, including the specific details of information that must be recorded. In addition, the Person in Charge will be required to maintain a record of all notifications made in compliance with 18 AAC 90.640(a)(3), (a)(6), and (b).

=====
COMMENTS ON LARGE QUANTITY REPORTING [18 AAC 90.640(a)(8)]

Under the proposed regulations, the land manager must post a report on the land manager's website describing how much of each product was used, and where.

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51. Comment Summary:

The proposed regulations would require the land manager to post a report on pesticide use whenever more than fifty pounds of pesticide was applied. Weight is not a good way to quantify pesticide use:

- Weight is an arbitrary measure and does not reflect the potency of various chemicals. Potent pesticides are applied in small quantities, and more benign pesticides are usually applied in larger quantities. Fifty pounds of one pesticide can be equally as toxic as a teaspoonful of another pesticide.
- This section should be deleted.
- This section should be changed to require reporting based on the application area size. Since smaller quantities are generally needed for more potent products, the size of the application area is a better measure of "large amounts" of product.

Response:

This section has been modified to require reporting based on application area rather than weight of pesticide used.

=====

52. Comment Summary:

This section is unclear. This section should clarify whether the reporting threshold applies to the weight of the mixed pesticide, the weight of the concentrated pesticide, or the weight of the active ingredient alone.

Response:

This section has been modified to require reporting based on application area rather than weight of pesticide used.

=====

53. Comment Summary:

Information about the quantity and location of use is not sufficient. More information should be required to be included in the report.

Response:

DEC believes that the information required to be included in the report required under 18 AAC 90.640(a)(8) is adequate. In addition, record keeping requirements under 18 AAC 640(a)(7) will ensure that this information is available for all pesticide applications to state lands.

=====

COMMENTS ON DEC ACCESS [18 AAC 90.640(a)(9)]

Under the proposed regulations, DEC is granted access to the property during pesticide applications.

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54. Comment Summary:

Although unannounced inspections should be allowed, this section needs to be modified to address safety concerns. Access should be granted unless there is a safety risk.

Response:

This section has been modified to allow for access at “reasonable times”, which should address safety concerns.

=====

COMMENTS ON MULTIPLE APPLICATIONS [18 AAC 90.640(c)]

Under the proposed regulations, pesticides can be applied more than once per year.

55. Comment Summary:

Allowing multiple applications per year will help ensure adequate and effective pest control.

Response:

Thank you for your comments.

COMMENTS ON PROJECT SIZE DEFINITIONS [18 AAC 90.640(d)(2), 18 AAC 90.640(d)(3) in PUBLIC NOTICE VERSION]

In the public notice version of the proposed regulations, the IPM Plans and other requirements under 18 AAC 90.640 are not required if the application is to less than one acre or to less than one linear mile per year.

56. Comment Summary:

Subsection (d)(3) should be deleted.

- Defining an application area in terms of a linear mile does not make sense; pesticides are applied to areas, not linear, two dimensional spaces.
- A mile long area would need to be only 8.25 feet wide to equate to one acre. Since almost any application would be at least eight feet wide, there is no need to make a distinction regarding length of application area.

Response:

This section has been deleted, as the one acre size limit, defined in subsection (d)(2), is sufficient [Note that this subsection has been renumbered in the final regulation to 18 AAC 90.640(e)].

57. Comment Summary:

IPM requirements should apply to treatments under one acre in size.

Response:

For small areas, compliance with label and other pesticide requirements is sufficient to ensure protection of public health and the environment.

COMMENTS ON IPM PLAN REQUIREMENTS [18 AAC 90.645]

Under the proposed regulations, the IPM Plan must establish a procedure for the use of pesticides in a manner that poses the least possible hazard to people, property, and environment.

58. Comment Summary:

The language in this section is unclear, as it is not possible to define what the ‘least possible hazard’ is.

Response:

The introductory paragraph to this section simply provides an overview and intent of an IPM Plan. An IPM Plan that includes the required elements in this section will lead to a project that meets this intent.

59. Comment Summary:

The IPM Plans will be required to include enough specific requirements to protect health, safety, and the environment, but will also provide each agency with the flexibility to tailor its pesticide use to ensure it can meet pest management goals.

Response:

Thank you for your comments.

60. Comment Summary:

The IPM Plan should contain more detailed information:

- The IPM Plan should require the same amount of detail about pesticide applications as is currently required under 18 AAC 90.515 for permits.
- The IPM Plan should contain details about;
 - Pesticide formulation
 - Active and inert ingredients
 - Rate
 - Dilution
 - Additives or adjuvants
 - EPA registration number
 - Toxicity
 - Method of application
 - Exact location
 - Regional factors
 - Climate
 - Soil
 - Pests
 - Precautionary measures
 - Water resources
 - Runoff
 - Pollinator protection

- Endangered species
- Alternatives to pesticide use
- Resistance management
- Different pest tolerance levels in different areas.

Response:

Many of these items are required under the proposed regulations. DEC does not feel that additional detail is required for IPM Plans. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

61. Comment Summary:

IPM Plans must be regional to address each area of the state, and its unique characteristics

Response:

This is correct. Under 18 AAC 90.640(a)(1), the IPM Plan must be "appropriate for the pest of concern," which will entail tailoring each IPM Plan to account for the conditions of the area.

COMMENTS ON REQUIREMENT TO CONSIDER NONCHEMICAL METHODS
[18 AAC 90.645, 18 AAC 90.645(1),18 AAC 90.645(4)]

Under the proposed regulations, the IPM Plan must consider use of pesticides only after nonchemical methods have failed or have been determined impractical. The IPM Plan must address preventative methods, mechanical controls, and physical controls.

62. Comment Summary:

The requirement to consider appropriate preventative, physical and mechanical controls has the potential to reduce the need to apply pesticides.

Response:

DEC concurs with this statement. The use of an IPM Plan may help reduce pesticide use, in comparison to the current permit system, which only considers the use of pesticides.

63. Comment Summary:

The proposed regulations encourage non-chemical controls.

Response:

DEC concurs with this statement.

64. Comment Summary:

Alternatives to pesticides should be required.

Response:

The proposed regulations require consideration of alternatives to pesticides, when effective. Under 18 AAC 90.645, the IPM Plan must address preventative measures, as well as physical and mechanical controls. In addition, an appropriate allowable pest presence must be determined. Pesticides are to be used only after nonchemical methods have failed or are determined to be impractical.

=====

65. Comment Summary:

Alternatives to pesticides are just as effective in most cases.

Response:

This is true in some cases, which is one benefit of requiring an IPM Plan, where alternative controls must be considered. The proposed regulations encourage the use of alternatives to pesticides when effective. Under 18 AAC 90.645, the IPM Plan must address preventative measures, as well as physical and mechanical controls. In addition, an appropriate allowable pest presence must be determined. Pesticides are to be used only after nonchemical methods have failed or are determined to be impractical.

=====

COMMENTS ON IPM PLAN REQUIREMENT MONITOR FOR PEST PRESENCE
[18 AAC 90.645(2)]

Under the proposed regulations, an IPM Plan must describe how the presence of a pest will be monitored.

66. Comment Summary:

Monitoring for pests will encourage early identification of pests and timely control efforts. This could prevent more significant pest infestations, which has the potential to reduce the need to apply pesticides.

Response:

DEC agrees with this statement.

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COMMENTS ON IPM PLAN REQUIREMENT TO ESTABLISH A THRESHOLD FOR ALLOWABLE PEST PRESENCE [18 AAC 90.645(3)]

Under the proposed regulations, an IPM Plan must establish a threshold for allowable pest presence.

67. Comment Summary:

Establishing a threshold for acceptable pest presence has the potential to reduce the need to apply pesticides unless that threshold has been met.

Response:

DEC agrees with this statement.

68. Comment Summary:

IPM Plans should require an acceptable pest presence to be established.

Response:

Under 18 AAC 90.645(3), the IPM Plan must establish an allowable pest presence.

COMMENTS ON IPM PLAN REQUIREMENT TO IDENTIFY POTENTIAL PESTICIDE PRODUCTS [18 AAC 90.645(5)]

Under the proposed regulations, an IPM Plan must identify pesticide products to be used if necessary.

69. Comment Summary:

Identifying potential pesticides ahead of time will result in careful consideration and appropriate pesticide choice.

Response:

Thank you for your comment.

COMMENTS ON REQUIREMENT FOR PERSON IN CHARGE TO DEVELOP IPM PLAN [18 AAC 90.650(1)]

Under the proposed regulations, the Person in Charge must develop and implement the IPM Plan.

70. Comment Summary:

There were several comments related to who would develop IPM Plans:

- DEC should develop and provide IPM Plans.

- Land managers should have the option of adopting DEC IPM Plans, or creating their own.

Response:

DEC will post an example IPM Plan on the DEC website which land managers can use as a template to develop project- and location-specific IPM Plans.

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71. Comment Summary:

IPM allows the applicator to demonstrate their understanding of the issues and control methods.

Response:

Thank you for your comments.

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72. Comment Summary:

IPM Plans should be written by the person who will implement them.

Response:

Under 18 AAC 90.650, the Person in Charge is responsible for both developing and implementing the IPM Plan.

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73. Comment Summary:

The proposed regulations require each agency who wishes to apply pesticides to gain detailed knowledge about pesticides.

- This will be a burden on the agencies.
- This will cause agencies to cut corners to save costs.
- The proposed regulations changes require each agency to become a pesticide expert.
- DEC should remain the central expert regarding pesticides, not require each agency to become an expert.

Response:

Knowledge of safe pesticide use and compliance with label requirements is required for anyone wishing to apply pesticides. Certified applicators, in particular, are trained and must meet qualifications which ensure adequate skills, knowledge, and understanding. Land managers will have the same resources available to them as they did when developing pesticide-use permit applications.

COMMENTS ON REQUIREMENT FOR PERSON IN CHARGE TO ENSURE COMPLIANCE [18 AAC 90.650(2), 18 AAC 90.650(5)]

Under the proposed regulations, the Person in Charge must ensure compliance with IPM Plan and with pesticide regulations.

74. Comment Summary:

Requiring a Person in Charge ensures accountability and an appropriate point of contact.

Response:

DEC agrees with this statement.

75. Comment Summary:

There is no accountability required for the Person in Charge.

Response:

Under 18 AAC 90.650, there is a regulatory requirement for the Person in Charge to ensure compliance with the IPM Plan and all other applicable pesticide regulations.

76. Comment Summary:

There is no requirement to comply with the IPM Plan.

Response:

Under 18 AAC 90.650, there is a regulatory requirement for the Person in Charge to ensure compliance with the IPM Plan and all other applicable pesticide regulations.

77. Comment Summary:

There is no requirement to comply with the pesticide label.

Response:

Under both federal and state regulation, compliance with pesticide label instructions is required for any person who handles or applies pesticides.

COMMENTS ON REQUIREMENT TO UPDATE THE IPM PLAN [18 AAC 90.650(3)]

Under the proposed regulations, the Person in Charge must review and update the IPM Plan every two years.

78. Comment Summary:

IPM Plans must be updated every two years, which will ensure that they remain accurate.

Response:

Thank you for your comments.

=====
COMMENTS ON PESTICIDE RISK
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79. Comment Summary:

Pesticides pose danger for human and animal health, including:

- Chronic disease
- Brain development and function.
- Pesticides have been found in more than 70% of common foods (USDA, 2006).
- Pesticides have been found in over half of adults and children (Centers for Disease Control and Prevention 2005).
- Pesticides are inherently toxic
- Varying formulations of pesticides have varying levels of toxicity, persistence in soils, and migration characteristics, and thus have varying levels of risk to human health.
- Pesticides cause cancer.
- Pesticides cause birth defects.
- Pesticides cause immunosuppression.
- Pesticides could be responsible for the increase in autism in Alaska.
- There are unknown dangers to pesticides that may be discovered in the future.
- The fact that pesticide labels require applicators to wear personal protective equipment is evidence that pesticides are dangerous.
- There are 900 registered active ingredients, many of which are toxic.
- 40 chemicals used in pesticide products are classified by the International Agency for Research on Cancer as know, probable, or possible human carcinogens.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect human health.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in unreasonable adverse effects to human health.

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80. Comment Summary:

Pesticides could contaminate drinking water.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA’s extensive analysis of each pesticide product is sufficient to protect drinking water sources.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in contamination of drinking water sources. Note that pesticide permits are still required for pesticide application directly to water.

=====

81. Comment Summary:

Humans and pets could be exposed to pesticides by:

- Walking on right-of-ways or other treated areas.
The public must use state lands and right-of-ways to access private lands and recreational areas. They can be involuntarily exposed to toxic chemicals under the proposed regulations.
- Eating the meat of game animals such as moose and grouse that feed where pesticides are applied.
- Eating fish caught near where pesticides are applied.
- Eating mushrooms, plants, medicinal plants, or berries gathered where pesticides are applied.
- Eating crops from farms and gardens where pesticides are applied.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. Label restrictions are designed to ensure that exposure potential is well below any level of concern for human or animal health. DEC is satisfied that that EPA’s extensive analysis of each pesticide product is sufficient to protect human and animal health.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in excessive exposure or unreasonable adverse effects to human or animal health.

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82. Comment Summary:

Pesticides cause environmental harm, including:

- Kills plants
- Kills wildlife
- Kills salmon and fish
- Persistent in soil
- Bio-accumulation
- Varying formulations of pesticides have varying levels of toxicity, persistence in soils, and migration characteristics, and thus have varying levels of risk to the environment.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect the environment.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in unreasonable adverse effects to the environment.

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83. Comment Summary:

Pesticides can contaminate water resources:

- Pesticides could leach or drift into nearby surface water or ground waters.
- Pesticides could contaminate groundwater.
- Pesticides could contaminate agricultural water supplies.
- Pesticides were found in every stream sampled in one study (Gilliom et al. 2006).

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect water resources from unreasonable adverse effects.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in unreasonable adverse effects to the

water resources. Note that pesticide permits are still required for pesticide application directly to water.

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84. Comment Summary:

Pesticides are mobile:

- Pesticides are mobile, and spread beyond the application areas through leaching, drift, and spread of contaminated vegetation.
- It isn't possible to ensure that pesticides will not affect nearby private property.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect nearby properties from unreasonable adverse effects.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticide use does not result in unreasonable adverse effects to the nearby properties.

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85. Comment Summary:

Using pesticides makes weeds stronger.

Response:

It is true that exclusive use of a single type of herbicide in large quantities can result in weed resistance over time. However, the anticipated pesticide usage resulting from the proposed regulations changes is not expected to be concentrated in area or pesticide type to the extent that would result in pesticide resistance. In addition, certified applicators are trained and tested on methods to prevent development of pesticide resistance.

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86. Comment Summary:

2,4-D is highly toxic and was a major component of Agent Orange. These products are not designated as restricted-use by the state.

Response:

2,4-D is widely available and commonly used to control broadleaf weeds. It is included in common products such as Scott's Turf Builder, Miracle-Gro Lawn Fertilizer Plus Weed Control, Bayer Advanced Fertilizer Plus Weed Control, and other 'weed and feed' and lawn care products.

This pesticide has undergone the extensive EPA registration review described in the Introduction, and product labels reflect precautions necessary for safe use.

Agent Orange was a defoliant used as part of the U.S. military warfare program and elsewhere. It was comprised of 50% 2,4-D, an effective herbicidal compound. However, the devastating human health impacts resulting from its use were a result of the other ingredients in the product, including contamination from dioxin. Agent Orange is not approved for use anywhere within the United States.

87. Comment Summary:

Advancements in equipment, products, and application techniques, as well as improvement to pesticides has resulted in safer use of pesticides.

Response:

Thank you for your comment.

COMMENTS ON IMPACTS TO PUBLIC PARTICIPATION

88. Comment Summary:

The public has a right to participate in decision related to management of state owned land, and the proposed regulations reduce or eliminate the ability of the public to participate in decisions related to state owned land.

- State lands, water, and fish belong to the citizens of Alaska.
- Removing public comment and input deprives Alaskans of their right to have a say in how their own lands are managed.
- Alaskans should have the right to comment on important state issues.
- Alaskans have the right to appeal bad decisions.
- The public will not be able to provide input on spraying that could impact water resources, such as spraying 'uphill' of groundwater, residential, agricultural, or other water supplies, spraying of waterways, or spraying on stream banks.
- The proposed regulation would allow agencies to spray near my property without any input from me.
- Removing public comment on these issues weakens democratic participation in decisions related to state lands.
- Removing public comment on these issues circumvents our First Amendment rights.
- Removing public comment on these issues is unconstitutional.
- Article VIII of the Alaska Constitution recognizes the public interest in public land and water resources.
 - Article VIII, Section 1 of the Alaska Constitution establishes the policy that settlement of state lands and development of state resources must be made available for “maximum use consistent with the public interest”.

- Article VIII, Section 2 of the Alaska Constitution requires that utilization, development, and conservation of all natural resources must be for the “maximum benefit of its people”.
 - Article VIII, Section 3 of the Alaska Constitution “reserves to the people for common use” the fish, wildlife, and waters of the state.
 - Article VIII, Section 6 of the Alaska Constitution identifies land and other interests at the state “public domain”.
 - Article VIII, Section 8 of the Alaska Constitution ensures that the issuance of permits for exploration of any part of the public domain must be subject to reasonable concurrent uses.
 - Article VIII, Section 13 of the Alaska Constitution calls for a prior appropriate system of water rights, limited to state’s purposes and to the “general reservation of fish and wildlife”.
- Citizens have a “usufructory interest” in the State’s land and water resources that cannot be taken away without due process. A “usufructory interest” is the right of using and enjoying and receiving the profits of property that belongs to another, as established in *Krize vs. Krize* (2006).
 - The common use clause in Article VIII “strongly protects public access to natural resources”, as established in *Owsichek vs. State, Guide Licensing and Control Board* (1988)
 - Citizens have a “property-like” interest in public land and water resources, as established in *Pebble Limited Partnership vs. Parnell* (2009).
 - The state is required to hold in trust the fish, wildlife, and waterways for the benefit of all people in the state, as established in *Pullen vs. Ulmer*, (1996).
 - The state holds natural resources such as fish, wildlife, and water in trust for the benefit of all Alaskans, as established in *Brooks vs. Wright*, (1999).
 - Citizens have a “property-like” interest in fish, as established in *Pullen vs. Ulmer*, (1996).
 - Before DEC takes an action which threatens to adversely affect the public’s property interests in state land and water resources, DEC must provide notice and allow the public an opportunity to present meaningful comment and objections, as established in *Smart vs. State, Department of Health and Social Services* (2010).
 - The Alaska Supreme Court has afforded due process to the public in numerous cases seeking to protect trust resources because of subsistence, cultural, social, aesthetic, economic, and environmental public interests, as established in *State, Department of Natural Resources vs. Greenpeace, Inc.* (2004), *Kachemak Bay Conservation Society vs. State, Department of Natural Resources* (2000), *Trustees for Alaska vs. State, Department of Natural Resources* (1994), *Kuitsarak vs. Swope* (1994), *Alaska Center for the Environment vs. Rue* (2004), *Southeast Alaska Conservation Council, Inc. vs. State* (1983), and *Hammond vs. North Slope Borough* (1982).

Response:

Alaska land managers in various State Departments are entrusted with supervising and making decisions on a wide variety of activities on state land in accordance with relevant statutes and regulations without a public notice and comment period. The proposed regulations that allow for pesticide use on state owned land without prior public notice and comment are consistent with management practices on state land.

AS 46.03.330(a), concerning state pesticide projects, does not require a public notice and comment period. It requires that applicable projects must be conducted in accordance with the pesticide regulations of 18 AAC 90. DEC has statutory authority to regulate and supervise pesticide applications under AS 46.03.320. The decision to revise regulations covering pesticide applications to state-owned lands is consistent with ADEC's statutory authority.

The requirement for State agencies to complete IPM Plans for pesticide projects is a sound management practice that ensures that all practical management options for pests are considered. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

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89. Comment Summary:

IPM Plans should have to undergo full public review and comment process.

Response:

Alaska land managers in various State Departments are entrusted with supervising and making decisions on a wide variety of activities on state land in accordance with relevant statutes and regulations without a public notice and comment period. The proposed regulations allowing for pesticide use on state owned land without prior public notice and comment is consistent with management practices on state land.

AS 46.03.330(a) concerning state pesticide projects does not require a public notice and comment period. It simply requires that applicable projects must be conducted in accordance with the pesticide regulations of 18 AAC 90. The decision to revise regulations covering pesticide applications to state-owned lands is consistent with ADEC's statutory authority.

The requirement for State agencies to complete IPM Plans for pesticide projects is a sound management practice that ensures that all practical management options for pests are considered. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====
90. Comment Summary:

Under AS 46.03.320, the public must be notified when pesticides are applied to a public place. This means that the public should have an opportunity to comment on application on state lands.

Response:

While notification of the application of pesticides to a public place is required by AS 46.03.320, the statute does not require a public comment period.

Most applications of pesticides, including widespread use on private property, do not require posting or public notification. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====
91. Comment Summary:

DEC already possesses emergency powers to waive public comment when an emergency exists. It should not be able to do so in other circumstances.

Response:

DEC does have emergency powers authority under 18 AAC 90.510(b) to waive permitting requirements. In these situations, the waiver is not limited to public comment, but exempts the project from the entire permitting requirement. These powers are used only under extraordinary circumstances.

Alaska land managers in various State Departments are entrusted with supervising and making decisions on a wide variety of activities on state land in accordance with relevant statutes and regulations without a public notice and comment period. The proposed regulations allowing for pesticide use on state owned land without prior public comment is consistent with management practices on state land.

AS 46.03.330(a), concerning state pesticide projects, does not require a public notice and comment period. It requires that applicable projects be conducted in accordance with the pesticide regulations of 18 AAC 90. The decision to revise regulations covering pesticide applications to state-owned lands is consistent with ADEC’s statutory authority.

The requirement for State agencies to complete IPM Plans for pesticide projects is a sound management practice that ensures that all practical management options for pests are considered. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====
92. Comment Summary:

The public needs to be able to inform the agency of places that should not be sprayed near, such as railroad flag stops, residences close to spray areas, trailheads, private waters sources, wildlife populations, un-catalogued anadromous streams, etc.

Response:

DEC encourages the public to contact the Person in Charge for an IPM Plan to provide them with this type of information.

=====
93. Comment Summary:

Off site drift from spraying on right-of-ways is inevitable, so all of these projects could affect private properties and should be subject to the public notification and hearing requirements under AS 46.03.330.

Response:

Application of pesticide in accordance with label instructions should not result in significant drift. 18 AAC 90.610 prohibits application of pesticides in a manner that results in pesticide drift. In addition, the public notification requirements of the proposed regulations meet the requirements of AS 46.03.330.

=====
94. Comment Summary:

The proposed regulations protect pesticide and chemical companies from public examination.

Response:

Neither existing, nor proposed state pesticide regulations have a mechanism that would result in public examination of pesticide manufacturers.

=====
95. Comment Summary:

The regulations for permits do not require a public comment period, just that public notice be published. This is true in both the current regulations and the proposed changes.

Response:

The current and proposed regulations do require a public comment period before a pesticide-use permit may be issued. Under 18 AAC 90.520, the applicant must publish a public notice in accordance with the requirements of 18 AAC 15.050. Specific requirements for public notice, including specification of a period when comments will be accepted, are detailed in 18 AAC 15.050.

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COMMENTS OPPOSING PROPOSAL TO IMPLEMENT IPM PLANS IN PLACE OF PERMITS

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96. Comment Summary:

The IPM Plan does not consider or analyze risks as well as the permitting process does.

- It does not address risks to human health or the environment.

- It does not include any analysis of risk.
- It does not consider the varying levels of risk of different pesticides, formulations, mixtures, etc.
- It does not require DEC regulation of the types and toxicities of pesticides.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. Also see responses to Comment Summaries 11, 12, and 13 regarding permitting.

=====

97. Comment Summary:

The IPM Plan does not protect the public health, welfare, and safety as well as the permitting process does.

- The permitting process is crucial to protect public health.
- DEC cannot protect public health without reviewing a permit application and retaining the authority to strike down a permit
- It does not require applicators to identify private drinking water sources near the spray area.
- It does not require applicators to identify features near the spray area such as soil types and drainage characteristics
- It does not address risks to human health.
- It does not include any analysis of risk.
- It does not consider the varying levels of risk of different pesticides, formulations, mixtures, etc.
- It does not impose no-spray buffers for water bodies or drinking water sources.
- It does not require DEC regulation of the types and toxicities of pesticides.
- It does not consider air contamination.
- It does not protect children.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. The use of an IPM Plan may reduce the use of pesticides, since it requires the consideration of non-chemical methods. Also see responses to Comment Summaries 11, 12, and 13 regarding permitting.

=====

98. Comment Summary:

The IPM Plan does not protect water quality as well as the permitting process does.

- It does not require applicators to identify water bodies near the spray area
- It does not require applicators to identify features near the spray area such as soil types and drainage characteristics
- It does not impose no-spray buffers for water bodies or drinking water sources.

- It does not protect water quality or fish habitat.
- There is no assurance that pesticides will not leach or drift into nearby surface water or ground waters.
- Spraying may occur on stream banks.
- Spraying may occur in waterways.

Response:

The current permitting system requires significant resources, and provides negligible environmental benefit as a result. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. The use of an IPM Plan may reduce the use of pesticides, since it requires the consideration of non-chemical methods. Also see responses to Comment Summaries 11, 12, and 13 regarding permitting.

=====
99. Comment Summary:

The IPM Plan does not protect the environment as well as the permitting process does.

- The permitting process is crucial to the environment.
- It does not require applicators to identify features near the spray area such as soil types and drainage characteristics
- It does not protect wildlife or wildlife habitat.
- It does not protect salmon or other fish.

Response:

The current permitting system requires significant resources, and provides negligible environmental benefit as a result. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. The use of an IPM Plan may reduce the use of pesticides, since it requires the consideration of non-chemical methods. Also see responses to Comment Summaries 11, 12, and 13 regarding permitting.

=====
100. Comment Summary:

The proposed regulations will result in changes to how pesticides are used:

- The proposed regulations will result in increased pesticide use.
- There will be more spraying because there are fewer limits on its use.
- The proposed regulations will allow enormous amounts of unregulated spraying.
- The proposed regulations do not ensure that pesticides will be applied safely.
- The proposed regulations will result in pesticide misuse because there is no oversight prior to application.
- The proposed regulations will lead to violations of FIFRA and the Clean Water Act.
- There are likely to be violations which would affect human health and the environment.

Response:

There may be some changes in how pesticides are used on state lands as a result of the proposed regulations. However, compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. The use of an IPM Plan may reduce the use of pesticides, since it requires the consideration of non-chemical methods.

=====

101. Comment Summary:

Relying on label instructions is not sufficient to ensure no unreasonable adverse effect:

- Recent permits issued to the railroad all included stipulations that imposed greater restrictions on the spray operation than was required by the label. This indicates that DEC did not feel that compliance with the label is adequate protection.
- For the Railroad’s 2006 permit application, DEC determined that the proposed 10 foot spray buffer was inadequate to prevent water pollution by the herbicide, even though the label did not specify a buffer. This indicates that DEC did not feel the label was adequate to protect water resources.
- For the Railroad’s 2006 permit application, they wanted to use 2,4-D. Denying the permit is evidence that DEC did not feel that the label requirements were sufficient at that time.

Response

Pesticide use permits issued to the railroad have included several stipulations. Many stipulations reiterate existing regulatory requirements (such as the requirement to submit reports, correctly store pesticides, comply with label directions, etc.). Operational items which exceeded label requirements, such as spray buffers near water resources, were included by the railroad in the permit application that was public noticed. As a result, these items were included as stipulations in the permit issued by DEC.

DEC’s decision in 2006 to deny a permit for the railroad was specifically due to an inadequate permit application. In specific, the application failed to adequately identify water bodies when the pesticide chosen by the railroad was not approved for application to water.

The requirement in 18 AAC 90.640(6) for notification to DEC of application 15 days in advance for an area greater than one acre is sufficient to allow DEC to coordinate with applicators and the Person in Charge of the IPM to address any precautions that may be necessary.

=====

102. Comment Summary:

Relying on use of a certified applicator is not sufficient to ensure no unreasonable adverse effect:

- For the Railroad’s 2006 permit application, DEC determined that the Railroad did not adequately identify water resources. This indicates that certified applicator’s best professional judgment was inadequate.
- For the Railroad’s 2006 permit application, DEC determined that the proposed 10 foot spray buffer was inadequate to prevent water pollution by the herbicide, even though the

label did not specify a buffer. This indicates that DEC did not feel that the certified applicator's best professional judgment, that a 10 foot buffer was adequate, would ensure protection of water resources.

Response:

The 2006 Railroad application was denied due to an insufficient permit application. The pesticide proposed for use was not approved for application to water, and DEC did not believe that water locations were adequately identified in the permit application. Any proposed or required use of a certified applicator in relation to the 2006 application was not relevant to DEC's decision.

=====
103. Comment Summary:

Recent Railroad permits have contained meaningful conditions and stipulations, which would not be required under the proposed regulations. These requirements included

- Maintain telephone and website with up to date application information;
- Post notices prior to application at road crossings, depots, and flag stop cars;
- Provide a yearly summary of treatment results; and
- Don't apply to areas that area bare of vegetation.

Response:

DEC agrees that these are useful conditions specific to the Railroad permits. However, the intent of the first three requirements referenced above is met by the public notification and recordkeeping components of the proposed regulations.

The intent of the final requirement referenced above, regarding application to areas bare of vegetation, is met by the requirements of the Integrated Pest Management Plan, which requires land managers to determine an allowable pest presence, and requires consideration of non-chemical pest management when appropriate.

=====
104. Comment Summary:

The current permitting process requires consultation with outside agencies within Alaska, other states, and other countries. The proposed regulations do not require these consultations.

Response:

Current regulations do not require outside consultation, but do allow it when appropriate (18 AAC 90.520). Land managers will retain the option to consult with other agencies as necessary.

=====
105. Comment Summary:

The current permitting process requires education, interaction, outreach, and inspection activities by DEC that will not occur under the proposed regulations.

Response:

Significant DEC staff time and resources are currently occupied with processing pesticide-use permits. Under the proposed regulations, staff time and resources will be available for additional education, outreach, and inspections.

=====

COMMENTS SUPPORTING PROPOSAL TO IMPLEMENT IPM PLANS IN PLACE OF PERMITS

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106. Comment Summary:

The proposed regulations ensure protection of public health and safety and protection of the environment.

- The proposed regulations do not give DEC or state agencies the authority to spray pesticides with no concern for environmental and human impact.
- State agencies must still apply in accordance with health and safety standards, and comply with pesticide labels.
- The proposed regulations will allow for safe use of pesticides on state land.

Response:

DEC agrees with these statements.

=====

107. Comment Summary:

The proposed regulations actually strengthen some of the responsible use requirements.

Response:

Thank you for your comments.

=====

108. Comment Summary:

The proposed regulations will allow for better pest control on state owned lands.

- It will allow for more timely use of pesticide if necessary to stem an outbreak of a pest.
- Controlling infestations before they become large will result in less need of pesticide in the long run.
- There is a very high potential cost to land managers and agriculture if invasive weeds are not effectively controlled. These regulations will allow for timely and appropriate controls of invasive weeds.

Response:

DEC agrees that the proposed regulations will allow for more timely responses to invasive species issues and infestations

=====
109. Comment Summary:

The proposed regulations will allow for enhanced public safety for rail passengers, vehicle traffic on roads, and airplanes:

- It will allow for adequate vegetation on railroad tracks, which is necessary to allow for track inspections and to remove tripping hazards for employees. It is also necessary to prevent degradation of the track bed and components, which presents a safety hazard for passengers and freight. Vegetation control is required by the Federal Railroad Administration.
- It will allow for adequate vegetation control along highways, which is necessary to prevent fixed object hazards from brush and trees, to allow adequate visibility, to reduce shading which prevents ice and snow from melting, to eliminate moose browse near roadways, and to prevent roots and other vegetation growth from damaging the road surface.
- It will allow for adequate vegetation control at airports, which is necessary to reduce wildlife habitat near airports. This will reduce potential for bird strikes and for large animal occurrence on runways.

Response:

DEC agrees that the proposed regulations will allow for these benefits.

=====
110. Comment Summary:

Under the proposed regulations, land managers can choose to apply additional protective measures when desired.

Response:

Thank you for your comments.

=====
111. Comment Summary:

The proposed regulations allow a more effective use of DEC resources. DEC resources and personnel will be available for field monitoring, outreach, and compliance activities related to the pesticide activities of most concern.

Response:

Significant DEC staff time and resources are currently occupied with processing pesticide-use permits. Under the proposed regulations, staff time and resources will be available for additional education, outreach, and inspections.

=====
112. Comment Summary:

The proposed regulations allow for more cost effective use of agency resources in controlling pests and invasive species.

Response:

Thank you for your comments.

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113. Comment Summary:

The proposed regulations will encourage exchange of ideas and information between land managers.

Response:

Thank you for your comments.

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114. Comment Summary:

The proposed regulations will allow DOT to work more closely with suppliers of roadside management products and equipment.

Response:

Thank you for your comments.

=====
115. Comment Summary:

As opposed to using only mechanical methods, being able to use herbicides will allow for:

- better control of pests
- less frequent intervention
- lower cost
- better worker safety

Response:

Thank you for your comments.

=====
COMMENTS ON EPA EVALUATION AND PESTICIDE LABELS

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116. Comment Summary:

Pesticides should undergo an analysis to determine the toxicity or risk:

- There should be a required assessment by DEC of the toxicity of a pesticide and its risk to human health and the environment.
- Pesticides should be tested and proven safe for non-target species, humans, animals, and fish.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting

unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect human health, animals, and the environment.

=====

117. Comment Summary:

EPA evaluation and registration of pesticides is not adequate

- EPA does not require completion of studies to evaluate pesticides for health risks before approving.
- It does not ensure the safety of pesticide products.
- It does not ensure protection of wildlife or human health.
- It does not consider pesticide accumulation in the environment, as evidenced by presence of pesticides in plants in Denali National Park.
- EPA has been wrong in previous decisions, and materials once thought to be safe are now known to be toxic, carcinogenic, bio-accumulate, or are otherwise unsafe.
- EPA does not require independent testing results - it relies on manufacturer's data.
- Toxicological protocols used by EPA have crude endpoints.
- EPA tests do not address delayed morphological and function data of fetal origin endpoints.
- EPA does not evaluate over 16,000 products on the market in the U.S.
- Complete toxicological data is available for only some of the currently registered active ingredients.
- There is adequate testing of only 16% of registered active ingredients.
- There is adequate testing of only 100 of the more than 600 active ingredients that are registered (Schettler, 2000).
- Reproductive and developmental toxicity data are insufficient (Schettler, 2000).
- The EPA registration process is based on economic benefits versus potential harm
- Pesticides are approved before all scientific testing is finished, and they rarely alter their decision once testing data is completed.
- Changes to pesticide approvals take years.
- EPA pesticide policies are not keeping up with new science concerning endocrine effects, epigenetic effects, reproductive and developmental toxicity findings, and information about chronic or cumulative effects.
- The National Marine Fisheries Services states that EPA underestimates risk to salmon due to inadequate risk assessment methods.
- The State of Alaska petitioned the EPA in 2006 to require pesticide manufacturers to disclose all ingredients, not just pesticidal active ingredients.
- Registration testing is for the active ingredient only, and does not include the complete formulation, including inactive ingredients.
- Registration testing is for the active ingredient only, not the complete formulation, including mixtures of active ingredients.
- Inactive ingredients are not 'inert', but can be toxic or hazardous.
- The term 'inert' is misleading.

- There are over 500 inert ingredients that are currently used as active ingredients (Cox, 2006)
- Pesticide regulations are similar to TSCA law from 1976, when 80,000 chemicals were granted grandfathered EPA approval and were never tested for safety.
- The European Union pesticide approval process is a better method.
- Approximately 40 carcinogenic chemicals are used in EPA registered pesticides. (Report of the President’s Cancer Panel, 2010)
- The EPA evaluation does not address unique factors in Alaska, such as climate, soils, microbes, etc. which can impact migration and persistence of pesticides.
- Current studies are inadequate (Colburn 2007).
 - Contemporary acute and chronic toxicity studies are not protective of future generations.
 - The range of doses used in studies should be based on levels found in the environment and human tissues.
 - Studies should be based on functional neurologic and behavioral endpoints.
 - Study results should be published in open literature.
 - Impacts of trans-generational exposure on all organ systems should be inventories through two generations on all current and new pesticides.
 - A new regulatory approach is needed.

Response:

As described in the Introduction, the EPA conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. EPA assessments are designed to over predict toxicity and risk.

DEC is satisfied that that EPA’s extensive analysis of each pesticide product is sufficient to protect human health, animals, and the environment.

=====

COMMENTS ON JUSTIFICATION FOR REGULATIONS REVISION

118. Comment Summary:

DEC has not explained why the current pesticide regulations need to be changed. DEC should provide a document identifying the problems with the current regulations.

Response:

Detailed explanation regarding the inadequacies and problems with current regulations is provided throughout this document.

=====
119. Comment Summary:

The fact that private and federal land managers do not have to go through the permitting process is not a reasonable justification to eliminate permitting requirements:

- Public lands should be held to a higher standard.
- Public lands are area accessible to, and used by, the public.
- The public has a fundamental interest in how public lands are used and managed.

Response:

Thank you for your comments. Concerns related to exposure are addressed under Comment Summary 79. Concerns related to public input on pesticide use on state lands are addressed under Comment Summary 88.

=====
120. Comment Summary:

The lack of permitting requirements in other states is not a reasonable justification to eliminate permitting requirements because other states allow pesticides to be overused, and are not a good model for Alaska.

Response:

The lack of permitting requirements in other states is an indication of relative risk. Alaska's pesticide regulations on state lands remain more stringent than those in other states.

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====
121. Comment Summary:

Reducing staff and agency workload is not a reasonable justification to eliminate permitting requirements because DEC should be funded and staffed well enough to fulfill their duty to protect public health and the environment.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

The proposed regulations will allow for more effective use of staff time and resources, which will enhance DEC's ability to fulfill its duty to protect public health and the environment.

COMMENTS SUGGESTING PESTICIDE REGULATIONS SHOULD BE INCREASED

=====
122. Comment Summary:

There should be increased requirements for pesticide-use permits:

- Off site drift from spraying on right-of-ways is inevitable, so all of these projects could affect private properties, and should be subject to permit requirements.
- All land owners should have to go through the permitting process before applying pesticides.
- A permit should be required to apply restricted-use pesticides to state land.

Response:

For the uses mentioned, DEC does not feel that permitting requirements would be appropriate or necessary to ensure protection of public health or the environment. Compliance with label directions and other pesticide regulations are adequate to ensure that pesticides are safely applied and used for most circumstances.

=====
123. Comment Summary:

There should be increased opportunity for public comment on pesticide use.

Response:

Concerns related to public input on pesticide use on state lands are addressed under Comment 88.

=====
124. Comment Summary:

Chemicals should be more restricted:

- No pesticides should be allowed for any reason.
- Toxic chemicals should not be freely available for anyone to use.

Response:

Pesticides include a wide variety of products, including sanitizers used to prevent disease outbreak in hospitals, products which prevent agricultural diseases, and even many types of bleach. Blanket prohibition of all pesticides is not possible.

However, there are very stringent regulations and requirements for all pesticides. Compliance with label directions and other pesticide regulations are adequate to ensure that pesticides are safely applied and used for most circumstances. Additional requirements such as IPM Plans or pesticide-use permits are designed to ensure safety for other types of uses.

=====
125. Comment Summary:

Permits should not be issued when there is opposition from residents in the area.

Response:

DEC recognizes that some individuals have strong opinions regarding the use of pesticides, and acknowledges these concerns. However, decisions about pesticide risk must be based on a scientific analysis. DEC does not have statutory authority to restrict activity due to public opposition.

126. Comment Summary:

There is so much water and wetland in Alaska that only pesticides that are approved for application to water should be allowed.

Response:

All pesticides must be applied in accordance with label instructions. These instructions include information about whether they may be applied to water, or how close to water they may be applied.

COMMENTS ON DEC'S REGULATORY OBLIGATIONS

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127. Comment Summary:

The proposed regulations shift responsibility for safe, proper, and legal handling of pesticides from DEC to the agency conducting the applications.

Response:

DEC retains authority for ensuring compliance with pesticide regulations. Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====

128. Comment Summary:

Protecting public health and the environment is DEC's job.

- DEC has an obligation to protect public health, safety, and welfare, and the environment.
- DEC's directive is to ensure that pesticides are not applied in a manner that may cause damage to, or endanger the health, welfare, or property of another person, or in a manner that is likely to pollute the air, soil, or water of the state.
- The state of Alaska has a federal trust obligation to tribal communities that depend on water resources.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides do not result in unreasonable adverse effects to water resources.

=====
129. Comment Summary:

The proposed regulations violate the equal protection clause of the Alaska Constitution.

Response:

The proposed regulations do not violate the equal protection clause of the Alaska Constitution because they apply equally to all individuals similarly situated. There is no unequal treatment either on the face of the proposed regulation language or in how the proposed regulations will be applied. The proposed regulations meet all constitutional and statutory requirements related to application of pesticides.

=====
130. Comment Summary:

The proposed regulations do not meet directives under AS 46.03.330(b).

Response:

AS 46.03.330(b) requires public notice for pesticide applications to "property owned separately by two or more persons." As these applications would require a permit under 18 AC 90.500, and therefore would require public notice and comment, all statutory requirements are met.

=====
131. Comment Summary:

The proposed regulations violate AS 46.03.320 and AS 46.03.730.

Response:

All requirements of the cited statutes are met by the proposed regulations.

AS 46.03.320 reads as follows:

(a) The department may

- (1) regulate the transportation, testing, inspection, packaging, labeling, handling, and advertising of pesticides and broadcast chemicals offered for sale or placed in commerce for use in the state;
- (2) regulate and supervise the distribution, application, or use of pesticides and broadcast chemicals in any state project or program or by a public agency under the jurisdiction of the state;
- (3) regulate or prohibit the use of pesticides and broadcast chemicals;
- (4) register pesticides and broadcast chemicals for sale or distribution.

(b) The department may provide by regulation for the licensing of or temporary license waiver for private applicators of restricted-use pesticides, for persons engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals, and for other persons engaged in the spraying or application of pesticides and broadcast chemicals in public places. A person engaged in the custom, commercial, or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance.

(c) A person may not apply a pesticide or broadcast chemical in a public place unless licensed by the department or otherwise authorized under a regulation of the department. The department shall by regulation provide for reasonable public notification, including written notice posted on the application site, when pesticides and broadcast chemicals are applied in a public place. In this subsection, "public place" means (1) common areas of an apartment building or other multi-family dwelling; (2) that portion of a government office or facility to which access is not ordinarily restricted to employees; and (3) plazas, parks, and public sports fields.

(d) In this section, "multi-family dwelling" means a building that includes more than four single-family dwellings.

AS 46.03.730 reads as follows:

A person may not spray or apply, or cause to be sprayed or applied dichloro-diphenyl-trichloro-ethane (DDT), dieldrin, or other pesticide or broadcast chemical in a manner that may cause damage to or endanger the health, welfare, or property of another person, or in a manner that is likely to pollute the air, soil, or water of the state without prior authorization of the department.

=====
132. Comment Summary:

DEC should have the resources to both do field monitoring and compliance activities related to pesticide activities, and process permits.

Response:

Significant DEC staff time and resources are currently occupied with processing pesticide-use permits. However, the permitting process does not add a significant public or environmental health benefit.

The proposed regulations will allow for more effective use of staff time and resources, which will enhance DEC's ability to fulfill its duty to protect public health and the environment.

=====
COMMENTS ON REGULATORY PROCEDURE, PROCESS, OR REQUIREMENTS

=====
133. Comment Summary:

There is no requirement to comply with pesticide regulations.

Response:

All pesticide regulations under 18 AAC 90 are enforceable by law.

=====
134. Comment Summary:

The state cannot require the federal government to apply for a permit, but this does not mean that the federal government does not have their own regulations and controls over the use of pesticides on federal land.

Response:

The proposed changes to the regulations do not address pesticide activities on federal land.

=====
135. Comment Summary:

It is unclear whether a permit and/or IPM Plan would be required if a state agency applies pesticides to private land.

Response:

18 AAC 90.500 establishes that a pesticide use permit is required when a government entity applies pesticides to private land. This section has been modified to retain the original language regarding two or more properties.

The proposed regulations related to IPM Plans specifically require the IPM Plan only on state lands or right-of-ways.

=====
136. Comment Summary:

Will current permits be rescinded? Will these agencies be required to comply with IPM Plan requirements?

Response:

Once new regulations go into effect, existing permits for pesticide application to state land or right-of-ways will no longer be required, and may be rescinded. Compliance with new regulations, including IPM Plan requirements, will be required for all pesticide applications to state land.

=====
137. Comment Summary:

18 AAC 90.535 define reporting requirements for pesticide use under pesticide permits.

- It is unclear if the reporting requirements apply under the revised regulations.
- These reporting requirements should apply to any kind of pesticide application, whether public or private.

Response:

18 AAC 90.535 provides detailed requirements for providing a summary of pesticide treatment and results under a pesticide-use permit. No changes to 18 AAC 90.535 are proposed. These requirements do not apply to other types of pesticide applications when no permit is required.

DEC does not believe that a significant environmental or public health benefit would be derived from extending this reporting requirement to other types of pesticide use. Under the proposed regulations, larger state pesticide projects will have some reporting requirements under 18 AAC 90.640(a)(8).

=====
138. Comment Summary:

The proposed regulations do not provide any information about inspections of pesticide applications under IPM Plans, such as frequency, purpose, scope, etc.

Response:

Inspection and enforcement is addressed under 18 AAC 90.700. These regulations detail DEC's authority to inspect and observe pesticide records, handling, and applications, including those conducted under an IPM Plan. Also, 18 AAC 90.640(a) includes requirements to provide DEC with both notice of applications, and access to the site during applications, which will provide DEC the opportunity to inspect these pesticide projects.

=====
139. Comment Summary:

Permits should be generic and should allow the permit holder to use any pesticide registered in the State.

Response:

DEC disagrees with this statement. For projects where there might be increased human health or environmental risk, such as applications to water or applications using aerial methods of distribution, a complete review is warranted. It would provide no value for DEC to issue a generic permit, as DEC would have no basis to review the effects to the environment or human health of the proposed application if it does not know which pesticide or pesticides will be used.

=====
140. Comment Summary:

DEC's decision that land based applications are less risky than aquatic and aerial applications is not supported.

Response:

Because of the fluidity and mobile nature of both air and water, pesticide applications to either are inherently less precise. For this reason, DEC feels that retaining the additional reviews and evaluations required by the permitting process are appropriate for these types of applications.

=====
141. Comment Summary:

Who will pay for the cost of developing IPM Plans?

Response:

As with the permitting process, the agency wishing to apply pesticides will be responsible for any costs they incur associated with the project.

142. Comment Summary:

It is difficult to determine exact dates to apply pesticides ahead of time. A range of dates would be better.

Response:

The proposed regulations do not require the applicators to determine exact application dates prior to application, but do require notice to be published at least 30 days in advance, and do require notification to DEC at least 15 days in advance.

143. Comment Summary:

We have no idea if the state highway right-of-ways are considered public places.

Response:

DEC has not had occasion to make a determination as to whether a highway right of way is a public place under AS 46.03.320; however, DEC has previously determined that the railroad right of way is not a public place under this statute. In making this determination, DEC considered testimony from legislative hearings related to the language and determined that the railroad right of way, stretching for the entire length of the 90 mile track included in the application under consideration, did not constitute a “public place” within the meaning of AS 46.03.320(c). This conclusion was also supported by an informal Attorney General Opinion submitted to the Governor regarding the bill that became AS 46.03.320(c) which confirms that the pool of places intended to receive advance public notification of pesticide application was intended to be narrow.

‘Public place’ would be *narrowly defined* in this context to encompass only common areas of multi-family dwellings containing more than four single-family units, the portions of government offices or facilities to which non-employees ordinarily have access, and plazas, parks, and sports fields. Legislative history indicates that the term “sports fields” is not intended to encompass golf courses.

The clear goal of the legislation was to provide information on pesticide application to areas where there is high volume usage by the public.

OTHER COMMENTS

144. Comment Summary:

Pesticides should not be used indiscriminately on public lands. Pesticide use should not become standard operating procedure.

Response:

Under 18 AAC 90.645, the IPM Plan must address preventative measures, as well as physical and mechanical controls. In addition, an appropriate allowable pest presence must be determined. Pesticides are to be used only after nonchemical methods have failed or are determined to be impractical.

=====
145. Comment Summary:

There is substantial and ongoing opposition to the use of pesticides in Alaska.

Response:

DEC recognizes that some individuals have strong opinions regarding the use of pesticides, and acknowledges these concerns. However, decisions about pesticide risk must be based on a scientific analysis.

=====
146. Comment Summary:

There were several comments expressing concern about historical use of pesticides:

- Rachel Carson wrote *Silent Spring* in 1962 to show that toxic chemicals were killing birds and many other animals.
- They used to spray the roadsides in Juneau in the 1960's, and we ate the nearby berries without any information about what had been sprayed.
- A chemical was sprayed on vegetation when the DEW line went through Canada, and there was an increase in cancer in that area.
- DDT was considered safe for many years.

Response: All pesticides are toxic to some degree and should be handled and applied with care. However, these examples occurred in 1950s and 1960s, well before current testing and registration requirements to ensure safety.

As described in the Introduction, the EPA now conducts rigorous analysis and review prior to registering a pesticide for use. The registration review considers all known information, and includes an extensive analysis of each pesticide product. If there is new evidence documenting unreasonable risk to human health or the environment, the allowed usage is modified and the label changed. When EPA identifies data gaps, new studies are required and reviewed. EPA also has the authority to cancel registration of products containing that pesticide. DEC is satisfied that that EPA's extensive analysis of each pesticide product is sufficient to protect human health.

=====
147. Comment Summary:

The proposed regulations will result in personal injury, trespass, complaints, and other legal challenges.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands. Also, there are no substantive changes to existing health and safety requirements in these proposed regulations.

=====
148. Comment Summary:

The proposed regulations will be challenged in court.

Response:

Thank you for your comment. DEC has confidence that the proposed regulations meet all statutory requirements.

=====
149. Comment Summary:

The proposed regulations changes are politically motivated.

Response:

Thank you for your comment.

=====
150. Comment Summary:

Education, outreach, monitoring, inspections, and other activities should be happening in addition to permitting activities.

Response:

Significant DEC staff time and resources are currently occupied with processing pesticide-use permits. However, the permitting process does not add a significant public or environmental health benefit.

The proposed regulations allow a more effective use of DEC resources. DEC resources and personnel will be available for field monitoring, outreach, and compliance activities related to the pesticide activities of most concern.

=====
151. Comment Summary:

The Clemson University Cooperative Extension website provides good information on IPM Plans.

Response:

Thank you for your comment. DEC has reviewed and continues to review resources on IPM, and will make examples available as part of implementation of the proposed regulations.

=====
152. Comment Summary:

Certain railroad vegetation management companies are incorporating the use of vegetation identification technology in railroad IPM and pesticide use.

Response:

Thank you for your comment.

=====
153. Comment Summary:

The proposed regulations will harm the state's tourism and commercial fishing by damaging the perception of Alaska as a pristine environment.

Response:

DEC does not believe that use of pesticides by state land managers will have a significant impact on tourists' perception of Alaska and whether they will or will not travel to Alaska, or on consumer's perception of Alaskan fish products.

=====
154. Comment Summary:

This is a major change in policy and regulation. This is an unprecedented change in regulations.

Response:

Thank you for your comment.

=====
155. Comment Summary:

There should be a citizens advisory board for all DEC business and decisions.

Response:

Thank you for your comment.

=====
156. Comment Summary:

The proposed regulations are poorly considered.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands.

=====
157. Comment Summary:

DEC needs more information about pesticide use before it makes changes to regulations.

- Are pesticides being misused in Alaska?

- Are pesticides being overused in Alaska?
- What is the proportion of pesticide use on private lands versus public lands?
- What are the human health and environmental effects of pesticide use in Alaska?

Response:

Transition from the pesticide-use permitting process to the proposed IPM Plan regulation provides comparable protection of environmental and public health. Additional research into pesticide use is not required to support the proposed changes.

=====
158. Comment Summary:

Permits should not be issued using incomplete data, like the UAF glyphosate study.

Response:

The proposed regulations do not affect the permit issuance requirements of 18 AAC 90.525.

EPA's conducts an extensive analysis of each pesticide product, and incorporates new scientific data regarding safety and use of existing products into its review, as described in the Introduction. While additional studies and data are continually being developed, the EPA registration review process is sufficient to protect human health and the environment from unreasonable adverse effects.

=====
159. Comment Summary:

"If at the end of World War II, at the Nuremburg War Crime Trials, charges had been brought against the primary owners, stockholders and Chief Chemists of the German Chemical Industries which had produced such things as Cyclon B used in the gas chambers of some of the concentration camps, convictions had been obtained and executions ensued, then Rachael Carson might not have had to write *Silent Spring*. The United States might not have build up stockpiles of nerve gas and ricin, our chemical industry would not have had a market for agent orange (into which some companies dumped their most toxic waste). Half of the females of species "more" evolved than reptiles might not be suffering from endometriosis (a pain full [sic] inflammation of the uterus), maybe we, as a society would have scrutinized the ancient notion of "war on nature". Instead, we were sold "Better Living through Chemistry". Marketed pills for everything and sold enzyme imitating scents and un-necessary [sic] sundries. Chemical science is not inherently evil but is is [sic] most easily preverted [sic] especially when there is money to be made ("saved" so its claimed). When the most profound cost are passed onto mute living things or people who's [sic] claims are ignored it should be a truism that a serious crime has been committed. Public input is the very least we should do."

Response:

Concerns related to safety of pesticides and public input are addressed above.

=====
160. Comment Summary:

Big corporations do not care about public or environmental health.

Response:

The proposed changes to regulations address application of pesticides by government entities only. This comment does not appear to relate to the proposed regulations changes.

=====
161. Comment Summary:

Alaska is already polluted from toxic wastes, sewage, oil, and other types of chemicals.

Response:

Compliance with an IPM Plan in conjunction with use of registered pesticides, application by a certified applicator, following label directions, and compliance with other pesticide regulations are adequate to ensure that pesticides are safely applied and used on state lands, and should not result in contamination.

=====
162. Comment Summary:

Weeds are everywhere in the lower 48, even though herbicides are heavily used there.

Response:

This comment does not appear to relate to the proposed regulations changes.

=====
163. Comment Summary:

The largest spreaders of invasive species are land clearing and vehicle activity, which is going to continue.

Response:

This comment does not appear to relate to the proposed regulations changes.

=====
164. Comment Summary:

Invasive species kill moose.

Response:

This comment does not appear to relate to the proposed regulations changes.

=====
165. Comment Summary:

Vehicle traffic is the largest killer of moose in Alaska, yet roads continue to be built.

Response:

This comment does not appear to relate to the proposed regulations changes.

=====

166. Comment Summary:

I object to the use of pesticides on the railroad.

Response:

Current pesticide use on the railroad is allowed through existing pesticide-use permit requirements. This comment does not appear to relate to the proposed regulations changes.

=====

167. Comment Summary:

There are no chinook salmon anymore due to the salmon and halibut bycatch problem.

Response:

This issue does not appear to be related to the proposed regulations changes.

=====

168. Comment Summary:

The proposed regulations result in taxation (to pay for spray programs) without representation.

Response:

This issue does not appear to be related to the proposed regulations changes.

=====

Citations

Colburn, T. 2007. A Case for Revisiting the Safety of Pesticides: A Closer Look at Neurodevelopment. *Environmental Health Perspectives* 114:10-17.

Cox, C. and M. Sorgan. 2006. Unidentified inert ingredients in pesticides: implications for human and environmental health. *Environmental Health Perspectives*.

Gilliom et al. 2006

National Cancer Institute Report, Reducing Environmental Cancer Risk. Report of the President's Cancer Panel, April 2010.

Schettler, T.M.D. et al. 2000. Generations at Risk: Reproductive Health and the Environment. Cambridge, MA: MIT Press.



**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, failed adoption on 9/24/13 2. Planning Commission Recommendation 3. Additional Information from the Chair of the Planning Commission
Originator: Planning Commission	
Originating Department:	
Date Submitted: 9/30/13; Originally 7/24/13	

Full Title/Motion:
Assembly Member Vick plans to make a motion to reconsider the 9/24/13 motion to adopt Ordinance 13-08-343.

Administrative Recommendation:

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

Comprehensive Plan Consistency Review:	
Comp Plan Policy Nos.: 7.2, Future Growth Plan & Maps Pages 151-152	Consistent: <input checked="" 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. Subsequent to the third public hearing on 9/24/13, the motion to adopt failed 2-3 with Smith and Waterman voting yes and Vick, Schnabel, and Lapp voting no (Berry was absent).

A member of the prevailing side, assembly member Vick, intends to ask for reconsideration. HBC 2.10.170 says, "[A] motion to reconsider requires a majority of affirmative votes and, if it prevails, the subject shall be open to debate and amendment in the same manner as the original question. Debates on motions to reconsider shall be limited to 25 minutes and no member shall speak for more than five minutes."

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, 10/8/13	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

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
Date of Third Public Hearing: 09/24/13 – Not Adopted

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

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

Memorandum

DRAFT

Haines Borough
Office of the Mayor
103 Third Avenue S.
Haines, Alaska 99827
sscott@haines.ak.us
Voice (907) 766-2231 ext. 30

September 27, 2013

To: Haines Borough Assembly members

Cc: Mark Earnest, Manager
Julie Cozzi, Borough Clerk;

From: Stephanie Scott, Mayor, Haines Borough

Subject: Process for evaluating initial slate of applicants for Manager position for the purpose of creating a list for further evaluation

Interim Manager Bob Ward provided a matrix you used to screen applications during the process that culminated in the hire of Mark Earnest. We deployed the same matrix when we screened applications for the position in June 2012; though there was ultimately no need to complete the process. In 2012, we added some numbers and weights to the anchors. If I remember correctly, we all shared a “ho hum” attitude toward the tool, questioning definitions, questioning the attempt to quantify. I believe the anchor we found especially difficult to discern was “leadership.”

Here are the anchors, definitions, and scoring that we used in 2012:

Education: 0-2 (high school, some college); **3** (BA); **4-5** (MPA = MPA + relevant certificates)

Municipal Management: 0-2 (two consecutive years); **3** (3 consecutive years) **4-5** (multiple 3 consecutive year placements or a single placement for more than 3 consecutive years)

Leadership (Count of Involvement in activities that are outside of assigned duties, like positions on municipal or charitable boards and organizations. Applicants tend to list quite a few of these activities.) **1 point for every 2 activities listed.**

Alaska Experience: (Raw count for every two years managing or working for an Alaskan municipality; 10 or more years = 5)

Personnel Management: (Based on number of employees in the organization. You may have to infer or the information may be contained in the applicants cover letter). **1-5 employees = 1; 6-15 = 2; 16-50 = 3; 51-100 = 4; >100 = 5**

Project Management: (think “capital” projects) **0-1** (manage short term or less than \$25,000 projects); **2-3** (manage year long project/s or less than \$500,000); **4-5** (manage multi-year projects over \$1,000,000).

In the past, you have used one screening tool or another to arrive at a collective decision about a narrowed field for follow-up. (Background search, telephone interview). For easy reference, I have added the schedule approved 9/24/13 as a footnote.¹

Please consider the possibility of a slight modification to the schedule. You might want to have an intermediate step between the short list and identification of finalists for an in-person interview. I think it is been standard practice to conduct telephone interviews with folks on the short list, and then to “short list” the short list.

There are two questions that it would be helpful for you to settle as a matter of business on October 8:

- 1) Do you wish to use a tool again (this one or a modification)? Or would you prefer a more informal approach? One approach or the other should be determined on October 8, to be used October 9 at the initial 6 PM hiring COW.**

- 2) The second question is: how would you like staff to prepare the applications for you prior to the 9th ? Do you want the staff to search the web for “hits” on the applicants prior to the 9th or do you want that**

1

Borough Manager Transition Schedule (Estimated)			
No. Weeks*	Activity	Begin Date	End Date
1.5	Advertise Position		10/3/2013
2	Candidate Screening - Develop Short List	10/4/2013	10/18/2013
2	Background/Reference Checks - Finalists	10/21/2013	11/4/2013
4	Schedule and Conduct Interviews	11/5/2013	12/3/2013
2	Negotiate Terms of Employment Agreement	12/4/2013	12/18/2013
5	Relocation	12/19/2013	1/25/2014
0.5	Transition Completed	1/27/2014	
17			

*As of 9/24/2013.

particular information stream to be available only for those whom you short list?

If you prefer a more informal approach, I suggest that each member read through the applications and cover letters, and independently select 3 or 4 candidates to present to the group, briefly describing why those particular applications rose to the top for you. After that exercise, perhaps consensus on a shorter list can be achieved and staff can go to work on background and reference checks, so that you can determine finalists.

If you prefer a more number-based approach, I would probably omit “leadership” entirely and let “personnel management” stand in for that since it seems to me that that is the area within which a municipal manager really has to excel.

I think we have education and municipal management about right, especially in terms of weight since our advertisement emphasizes experience over education (emphasis added):

Qualifications: A degree in public administration, finance, engineering or business administration is desired but a **successful record of increasing responsibility and accomplishment in municipal or governmental administration will be given the strongest consideration** in evaluation of applicant resumes. Thorough reference and background checks will be conducted.

I often hear community members and assembly members express a preference for local hire. I am not sure we can legally factor in place of residence, but you might want to consider depth of knowledge of the Haines Borough, as well as the Alaska state agency and legislative system. Perhaps this is captured already by the definition of Alaskan Experience.

Finally, you may want to try to evaluate skill in the area of communication and public relations. Written communication could be pegged to the cover letter, taking that as more or less, a writing sample. On the other hand, you may want to ask specifically for a writing sample from those you short list. Perhaps “public relation” skill can ultimately be inferred by searching the web for related news stories.

Haines Borough Manager Selection Criteria Chart

On a scale of 0-5. 0 = No Qualification 5 = Highly Qualified

[Note: The candidates are listed in alphabetical order]

<u>Candidate</u>	<u>Education</u>	<u>Municipal Management</u>	<u>Leadership</u>	<u>Alaska Experience</u>	<u>Personnel Management</u>	<u>Project Management</u>	<u>Total Score</u>	<u>Average Score</u>



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 13-367
Assembly Meeting Date: 10/8/13

Business Item Description:		Attachments:
Subject:	Cashing in of Leave Benefits - Manager	1. Manager Report 2. Email from the CFO 3. Manager Contract from date of hire and prior to August 2013 amendment
Originator:		
Originating Department:		
Date Submitted:		
9/30/13		

Full Title/Motion:
Motion: Authorize the cashing in of leave benefits, as allowed by the manager's contract and as requested by the manager.

Administrative Recommendation:
The borough manager recommends adoption.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$ \$6,604.11	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
Section 2, Item 4 of the Manager's Contract stated: "Leave by Manager or cashing-in of leave benefits by the Manager shall be subject to prior approval by the mayor or borough assembly." The manager is seeking that approval. The loss of leave accruals for the Manager occurred in 2012 and 2013, beginning with the January 31, 2012 pay period. This is consistent with my recollection of when I inquired about the possibility of cashing-in leave—that is, prior to January 2012—because I was approaching the cap. On January 10, 2012, the Assembly approved a 2 percent increase in the Manager's salary, as well as extending the Manager's contract. Because the request / inquiry for cashing-in of annual leave occurred prior to the Assembly action on January 10, 2012, and prior to the 2 percent increase, the annual leave pay should be calculated based on an annual salary of \$106,000, rather than the current salary of \$108,000. I believe this is the most conservative approach for calculating the pay out.

Referral:

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

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/8/13	Tabled to Date:



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

October 8, 2013

Cashing-In of Leave

The loss of leave accruals for the Manager occurred in 2012 and 2013, beginning with the January 31, 2012 pay period. This is consistent with my recollection of when I inquired about the possibility of cashing-in leave—that is, prior to January 2012—because I was approaching the cap. On January 10, 2012, the Assembly approved a 2 percent increase in the Manager's salary, as well as extending the Manager's contract.

Because the request / inquiry for cashing-in of annual leave occurred prior to the Assembly action on January 10, 2012, and prior to the 2 percent increase, the annual leave pay should be calculated based on an annual salary of \$106,000, rather than the current salary of \$108,000. I believe this is the most conservative approach for calculating the pay out.

The amount of leave that did not accrue is 129.59 hours. Based on that amount of leave, the cash out would be calculated as follows:

$$\text{\$106,000/yr} \times 1 \text{ yr} / 2,080 \text{ hr} \times 129.59 \text{ hr} = \text{\$6,604.11}$$

From: Jila Stuart
Sent: Thursday, October 03, 2013 2:29 PM
To: Mark Earnest
Subject: Manager Leave Not Accrued Due to Cap

Mark, here is the record of your leave which did not accrue because you were at the accrual cap:

Pay Period Ending	Leave not accrued
1/31/2012	0.03
2/28/2012	8.33
2/15/2012	8.33
3/15/2012	8.33
3/31/2012	0.33
4/15/2012	0.33
4/30/2012	0.33
5/15/2012	8.33
5/31/2012	0.33
9/30/2012	2.31
10/15/2012	8.33
10/31/2012	0.33
11/15/2012	8.33
11/30/2012	8.33
12/15/2012	8.33
2/15/2013	0.32
2/28/2013	8.33
3/15/2013	0.33
3/31/2013	8.33
4/15/2013	8.33
4/30/2013	8.33
5/15/2013	8.33
5/31/2013	8.33
6/15/2013	8.33
	<hr/>
	129.59

Jila Stuart

Haines Borough
Finance Director
Phone 907- 766-2231 ext. 27
Fax 907- 766-2716

EMPLOYMENT AGREEMENT

Borough Manager

This Agreement effective January 11, 2010, is between the Haines Borough, Alaska, (hereinafter "the Borough"), a municipal corporation, and Mark Earnest ("the Manager"), and is effective as provided below.

This Agreement is based upon the following premises:

WHEREAS, the Borough wishes to employ the Manager, in accordance with the Borough's authority under State law, the Haines Borough Charter and the Haines Borough Code, and the Manager wishes to be employed by the Borough; and

WHEREAS, the Borough and the Manager wish to memorialize the terms and conditions of the Manager's employment by the Borough, including benefits, conditions of employment, and working conditions.

Section 1: DUTIES

The Manager shall be employed by the Haines Borough and hold the title 'Borough Manager'. The Manager shall perform all duties and discharge all responsibilities of that position as prescribed by the laws of the State of Alaska, the Charter of the Haines Borough, the Haines Borough Code, and the direction of the Borough Assembly. The Manager reports to the Mayor and the Borough Assembly and shall maintain residency within the Haines Borough during the entire term of this Agreement.

Section 2: COMPENSATION

1. **Salary**. In return for services, the Manager shall receive an annual salary of \$100,000, payable in installments in accordance with the Borough's code and customary practice. This salary shall be effective for the term of this Agreement, subject to annual review by the Borough Assembly.

2. **Exempt Position**. The Manager acknowledges that the position of Borough Manager is salaried and exempt from overtime requirements. The Manager understands and agrees that he is exempt under the Fair Labor Standards Act (FLSA) and the Borough and the Manager further acknowledge that, while the Manager will often be required to work in excess of 40 hours per week and 8 hours per day, the Manager shall have the flexibility in scheduling the performance of his duties customarily allowed to salaried, exempt administrative employees.

3. **Union**. The Manager is an officer of the Borough and, as such, shall not be a member of the borough employee's union or subject to the collective bargaining agreement.

4. **Benefits**. The Manager shall be entitled to benefits provided under Haines Borough Code Title 2 (Sections 2.72 through 2.92) and those benefits customarily

provided to a permanent, full-time, exempt Borough employee, including annual leave, personal leave, executive leave, sick leave, insurance, and PERS participation in accordance with generally applicable policies in effect from time to time, provided that such benefits shall not be reduced during the term of this Agreement. Leave by the Manager or cashing-in of leave benefits by the Manager shall be subject to prior approval by the Mayor or Borough Assembly.

- A. Annual Leave – The Manager shall be entitled to 30 working days annual leave, including executive leave, except that any request for leave exceeding two consecutive weeks must be approved by the Borough Assembly.

5. **Travel, Meetings, and Professional Development.** The Manager shall receive allowance for travel, out-of-town meetings, and professional development expenses as authorized by the Borough Assembly in the budget for each fiscal year or as approved in advance by the Borough Assembly from time to time.

6. **Dues and Subscriptions.** The Borough agrees to pay the Manager's professional dues and subscriptions necessary for the Manager's full participation in no more than two national, regional, state or local associations and organizations necessary and desirable for the Manager's continued professional participation, growth, and advancement, and for the good of the Borough.

Section 3: PERFORMANCE EVALUATION

The Mayor and individual members of the Assembly may but are not required to periodically identify their concerns to the Manager by either informal discussions with the Manager or by more formal means during Assembly meetings. The Assembly may but is not required to meet with the Manager annually for the purpose of setting Assembly goals and priorities. The Assembly may but is not required to meet with the Manager annually to evaluate and assess the performance of the Manager in meeting or progressing toward the goals of the Assembly. If the Assembly chooses to evaluate the Manager, the Manager is required to fully cooperate with the Assembly in completing that evaluation process.

- A. In the event the Assembly determines that the performance of the Manager is unsatisfactory in any respect or needs significant improvement in an area, the Assembly may but is not required to describe these concerns in writing.

Section 4: TERM, TERMINATION AND SEVERANCE PAY.

1. **Term.** The term of this Agreement shall begin at 8:00 am on the date first written above and expire on January 15, 2012 at 5:00 pm. The Manager's employment pursuant to the terms of this Agreement automatically expires on January 15, 2012. This Agreement may only be extended in writing signed by both the Borough and the Manager. In the event the Manager remains as the Borough Manager after January 15, 2012 without a written Agreement or written extension of this Agreement, the terms and conditions of this Agreement specifically do not apply to employment after January 15, 2012 in those circumstances.

2. **Termination.** This Agreement and the Manager's employment under this Agreement are terminable at will and at any time by the Borough Assembly without any notice of any kind whatsoever, it being expressly and explicitly understood by the Manager that he holds his position at the will of the Borough Assembly. The Manager understands and agrees that no representations or course of conduct by the Borough Assembly will establish any legally enforceable expectation of his continued employment by the Borough.

The Manager shall provide the Borough Assembly with written notice of his resignation no less than sixty (60) days prior to the effective date of his resignation or expiration of this employment agreement. If the Manager quits or resigns without providing such notice, then the Manager shall forfeit all benefits which the Manager otherwise may be entitled to receive under this Agreement.

Dismissal and grievance procedures for borough employees provided in the Haines Borough Code shall not apply to the termination of the Manager's employment by the Borough Assembly.

3. **Severance Pay.** In the event that the Borough Assembly terminates the Manager's employment without cause, the Borough shall pay the Manager severance pay of three month's benefited salary for the Manager. Benefited salary, purposes of this section, shall mean an amount equal to three months prorated salary and benefits, and all cashable leave the Manager is otherwise entitled to under Section 2 (Compensation) of this Agreement. Severance pay shall be subject to all applicable local, state, and federal withholdings. A decision of the Borough Assembly not to renew this Agreement upon the expiration of its term under Section 4.1 (Term) of this Agreement shall not constitute a termination without cause event for purposes of this section.

If Borough Assembly terminates the Manager's employment with cause, or if the Manager terminates his employment, regardless of cause, then the Manager shall receive no severance pay. For purposes of the Agreement, any of the following shall constitute "cause" for termination:

- A. The Manager's failure to satisfactorily perform his duties in accordance with the provisions of this Agreement, or establish or maintain his Haines Borough residency as required by this Agreement;
- B. The Manager's failure to obey any lawful directive of the Assembly;
- C. The Manager's willful failure to comply with the Charter of the Haines Borough Charter or the Haines Borough Code;
- D. Conduct which the Borough Assembly reasonably believes reflects adversely on the Manager's position as the Manager's or on the Borough, including but not limited to:
 1. acts involving dishonesty;

2. fraudulent acts;
 3. embezzlement; or
 4. substance abuse;
- E. The Manager's death; or illness, incapacity or serious health condition that renders the Manager unable to adequately perform the duties and to discharge the responsibilities contemplated by this Agreement, with or without reasonable accommodation, for more than eight (8) consecutive work weeks. The Manager expressly waives any statutory right to additional paid or unpaid leave, available under state or federal law governing family leave or disability, acknowledging that the demands and responsibilities of the Borough Manager position do not permit extended leave beyond eight (8) consecutive weeks. Without waiver of this limitation, the Borough reserves the right, at the Manager's request and at the Borough's exclusive option, to continue benefits or payroll status for the Manager, despite the Borough's replacement of the Manager or termination of any statutory reinstatement right, for any period of time that would otherwise be available for leave qualified under state or federal family leave acts, not to exceed 18 weeks total.

4. **Termination Due to Charter Amendment:** If the voters of the Haines Borough approve an amendment to the Charter of the Haines Borough that has the effect of abolishing the office of Borough Manager, The Manager's employment shall be treated as terminated without cause as of the effective date of the Charter amendment, and the Manager shall be entitled to severance pay for a termination without cause as provided in this Agreement; *provided, however,* that the Manager shall not be entitled to severance pay if the Borough offers the Manager immediate reemployment within 30 days after the effective date of the Charter amendment in another Borough position with pay and benefits at least equal to the pay and benefits received by the Manager immediately before the effective date of the Charter amendment.

5. **Suspension:** The Borough may suspend the Manager with full pay and benefits at any time during the term of this Agreement, upon a vote of a majority of the Borough Assembly.

Section 5: OTHER EMPLOYMENT

It is recognized that the Manager must devote a great deal of time outside normal Borough office hours to the business of the Borough. Normal Borough office hours hereunder shall be construed to mean Monday through Friday (excluding Borough holidays), an 8-hour period sometime between 7:00am and 7:00pm. The Manager shall not undertake employment with any person or entity other than the Borough without prior approval of the Borough Assembly.

Section 6: INDEMNIFICATION

The Borough shall indemnify, hold harmless and defend the Manager against all claims and liability which may result from any claim, action or suit by any person based

upon alleged injury to or death of a person or alleged loss of or damage to property that may occur or that may be alleged to have been caused by the Manager in the course of performance of his official duties during the duration of his employment with the Borough under this Agreement. PROVIDED HOWEVER, that the Borough shall NOT be obliged to indemnify, hold harmless or defend the Manager against any such claim to liability arising out of or resulting from acts or omissions that, in the sole judgment of the Borough, may occur or that may be alleged to have been caused by the Manager while acting outside the course of performing his official duties, or from any false, deceptive, dishonest or criminal act/omission under the laws and regulations of the United States of America, the State of Alaska and/or any political subdivision thereof.

Section 7: GENERAL PROVISIONS

1. Any controversy or claim arising out of or related to this Agreement or the breach thereof shall be governed by the laws of the State of Alaska, and the Haines Borough, Alaska, and the forum for any legal proceeding thereon shall be the Superior Court for the State of Alaska, First Judicial District. The Manager agrees that venue for trial in any such action shall be in Haines, Alaska.

2. This Agreement constitutes the entire Agreement between the Manager and the Borough, supersedes all prior oral and written understandings, if any, between the Borough and Mark P Earnest, Borough Manager, which shall terminate as of the effective date of this Agreement.

3. Any amendment to this Agreement must be in writing and signed by both parties to be effective. The Manager understands and agrees that no Borough employee, nor the Mayor nor any individual member of the Assembly, has any authority to make any promises to the Manager, nor any authority to modify or alter the terms and conditions of this Agreement.

4. Except as required by this Agreement, or the laws of the State of Alaska, the Charter of the Haines Borough or the Haines Borough Code, the Borough's generally applicable personnel and employment policies and rules shall apply to the Manager's employment under this Agreement.

Section 8: MEDIATION:

As a condition precedent to filing any action in court with respect to any dispute arising out of or relating to this Agreement or arising out of or relating to the Manager's employment with the Borough, the Manager agrees to submit that dispute to mediation with a professional mediator mutually agreed to by the Manager and the Borough, and the Manager agrees to make a good faith effort to resolve the dispute in mediation.

Section 9: ACKNOWLEDGEMENT OF REPRESENTATION:

The Manager acknowledges that he has had a full opportunity to consult with attorneys of his choice before signing this Agreement. The Manager acknowledges that he is not relying on any statements or representations made by any employees, representatives, officers, consultants, the Mayor, or Assembly members of the Borough

in entering this agreement, and he further acknowledges that he has not received and is not relying on any legal advice or representations by the Borough attorneys.

Section 10. NOTICES:

Notices pursuant to this Agreement shall be given by personal delivery or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) Borough:
Haines Borough Clerk
Haines Borough
P.O. Box 1209
Haines, Alaska 99827

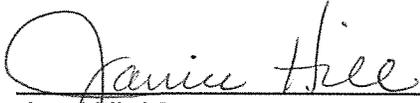
- (2) Manager:
Mark Earnest

Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

IN WITNESS WHEREOF, the Haines Borough Assembly has caused this Agreement to be signed and executed on the Borough Assembly's behalf by its Borough Manager and duly attested by its Borough Clerk, and Mark Earnest has executed this Agreement for and on behalf of himself, on the day and year first written above.

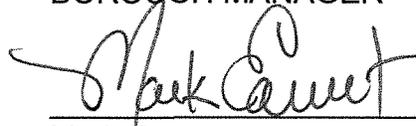
THE UNDERSIGNED HAVE READ THIS AGREEMENT CAREFULLY, AND HAVE HAD THE OPPORTUNITY TO HAVE THE AGREEMENT FULLY EXPLAINED BY THEIR RESPECTIVE ATTORNEYS. THE UNDERSIGNED FULLY UNDERSTAND THE BINDING EFFECT OF THIS AGREEMENT AND ACKNOWLEDGE THAT THEY SIGN IT VOLUNTARILY.

HAINES BOROUGH



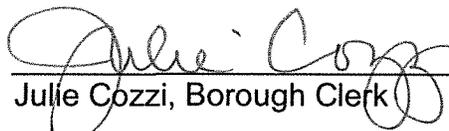
Jan Hill, Mayor

BOROUGH MANAGER

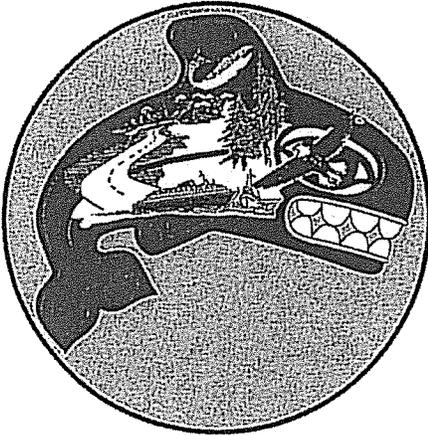


Mark Earnest

ATTEST:



Julie Cozzi, Borough Clerk



HAINES BOROUGH, ALASKA
P.O. BOX 1209 • HAINES, ALASKA 99827
Administration 907.766.2231 • (fax) 907.766.2716
Tourism 907.766.2234 • (fax) 907.766.3155
Police Dept. 907.766.2121 • (fax) 907.766.2128
Fire Dept. 907.766.2155 • (fax) 907.766.3373

December 3, 2009

Mark Earnest
3225 Wentworth Street
Anchorage, Alaska 99508

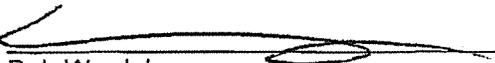
Dear Mark:

This **LETTER OF AGREEMENT** memorializes the points of our discussion regarding your contract of employment with the Haines Borough (draft contract attached). The basic points are as follows:

- \$100,000 annual salary
- 30 days per year annual leave
- 3 months severance for termination without cause except that expiration of the contract without renewal will not constitute termination without cause
- Haines Borough employee benefit package
- Initial contract is for 2 years with 1 year extension options thereafter
- Up to \$6,000 in reimbursable moving expenses

I trust this is an accurate reflection of our discussion. I look forward to your arrival and on behalf of the Haines Borough welcome you to Haines.

Sincerely,


Bob Ward Jr.
Interim Borough Manager

DECEMBER 3, 2009
Date


Mark Earnest
Future Borough Manager

DECEMBER 3, 2009
Date

Cc: Mayor and Assembly