CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
Sitka, AK
(907)747-1811

Meeting Agenda

City and Borough Assembly

Mayor Cheryl Westover
Deputy Mayor Pete Esquiro
Vice-Deputy Mayor Thor Christianson,
Phyllis Hackett, Mim McConnell, Mike Reif and Bill Paden

Municipal Administrator: Jim Dinley
Municipal Attorney: Theresa Hillhouse
Municipal Clerk: Colleen Ingman, MMC

Tuesday, September 11, 2012 | **6:00 PM** | **Assembly Chambers**

REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

Assemblymembers are proposing to take up Item G first, should that motion pass Item G will be taken up first and is anticipated to be lengthy. As a result other items listed on this agenda may be delayed.

Government-to-Government Update with Sitka Tribe of Alaska

V. PERSONS TO BE HEARD

Public participation on any item off the agenda. Not to exceed 3 minutes for any individual.

VI. REPORTS

Road Tax Group Presentation

a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other

VII. CONSENT AGENDA

All matters under Item VIII Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

A 12-122 Approve the minutes of the August 28 & 30 Assembly meetings.

Attachments: Minutes

B 12-123 Reappoint Judith Ozment to a term on the Sitka Historic Preservation Commission.

Attachments: Appointment

VIII. UNFINISHED BUSINESS:

C ORD 12-18 Amending SGC at Section 4.12.020 Entitled "Property Subject to Tax" to increase the Biennial Motor Vehicle Registration Tax to be used for municipal roads

Attachments: ORD 12-18 Motor Vehicle

ORD 12-18 Docs

This ordinance was previously POSTPONED until this meeting

IX. NEW BUSINESS:

New Business First Reading

D ORD 12-27 Amending SGC Title 21 Subdivision Code and Title 22 Zoning to clarify the zero lot line regulations and eliminate inconsistencies

Attachments: ORD 12-27 docs

E ORD 12-29 Amending various SGC Sections to authorize an advisory vote rather than a mandatory vote on sale, lease, or destruction of municipal assets

Attachments: ORD 12-29 DOCS

F ORD 12-30 Adding a new Chapter 4.44 to the SGC Establishing Required Levels of Cash to be Maintained and a new Chapter 4.45 to the SGC Establishing a Long Term Infrastructure Sinking Fund for the Repair and Replacement of General Fund Municipal Infrastructure, Streets, Sidewalks, Parking Lots and Parks

Attachments: ORD 12-30

Additional New Business Items

G 12-121 Authorize the Municipal Administrator to issue Barnard Construction Company Inc. a Notice of Award and enter into an agreement for Contract No. 9, General Construction and obligate project funds in the amount of $96,694,300 from the Blue Lake Third Turbine and Dam Upgrade Capital Project No. 90594

Attachments: Memo Blue Lake Expansion Contract 9

H 12-124 Approve a lease with Aggregate Construction, Inc. for Lots 6 & 7 of Sawmill Cove Industrial Park as recommended and approved by the Sawmill Cove Board of Directors

Attachments: Aggregate Construction Lease

Aggregate Construction Lease 2

I 12-125 Award CBC Construction, Inc. a bid for renovations to 4690 Building (formerly The Boat Company building) at Sawmill Cove Industrial Park as approved and recommended by Sawmill Cove Board of Directors - $139,260.42 and Change Order to substitute radiant floor heating with less expensive option

Attachments: CBC Award Bldg 4690

J 12-127 Approve a Utility Services Agreement between DOT&PF and CBS for $639,835 including a transfer of $90,000 from Project 90652 to Project 90673

Attachments: Utilty Reimbursable Services Agreement

X. PERSONS TO BE HEARD:

Public participation on any item on or off the agenda. Not to exceed 3 minutes for any individual.

XI. EXECUTIVE SESSION

Award of Blue Lake Dam Expansion Project Contract #9

XII. ADJOURNMENT

Colleen Ingman, MMC
Municipal Clerk
Publish: 9-7-12

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-122	**Version:**	1	**Name:**	
Type:	Minutes			**Status:**	PASSED
File created:	9/4/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012
Title:	Approve the minutes of the August 28 & 30 Assembly meetings.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Minutes				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	APPROVED ON THE CONSENT AGENDA	

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CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
Sitka, AK
(907)747-1811

Minutes - Draft

City and Borough Assembly

Mayor Cheryl Westover
Deputy Mayor Pete Esquiro
Vice-Deputy Mayor Thor Christianson,
Phyllis Hackett, Mim McConnell, Mike Reif and Bill Paden

Municipal Administrator: Jim Dinley
Municipal Attorney: Theresa Hillhouse
Municipal Clerk: Colleen Ingman, MMC

Thursday, August 30, 2012 | **6:00 PM** | **Assembly Chambers**

SPECIAL MEETING

I. CALL TO ORDER

Present: 5 - Westover, Paden, Christianson, Esquiro, and Hackett

Absent: 2 - McConnell, and Reif

II. FLAG SALUTE

III. ROLL CALL

IV. PERSONS TO BE HEARD

V. NEW BUSINESS:

12-120 Fiscal Year 2013 Non-Profit Grant Requests and Awards

Beverly Revard, a volunteer for Braveheart spoke in support of the motion. Charles Horan, Sitka Trail Works said their request will be well used. Kayla Betcher, Sitka Summer Music Festival supports the motion. She announced that the festival is now home in Sitka after being housed in Anchorage for the last ten years.

Hackett spoke to the economic stimulation and what an incredible bang for the municipalities buck. She has a little difficulty using any of the emergency funding. Christianson pointed out that it isn't often when the total amount requested is less than what there are available. If a true emergency arouse, he doesn't think it would be out of the realm of possibilities to allocate the funds.

Westover brought up that there are fewer requests than normal and perhaps the non-profits that already get a property tax exemption from the municipality took that into consideration this year and didn't apply as she had previously suggested.

Christianson moved to pool all the available grant funds and fund all the FY13 non-profit grant requests leaving the remainder in the Special Emergency Fund.

Hackett expressed concerns with the Youth Advocates application. She also believed they receive the property exemption. According to their submittal the funds were for snack food. Their request is for $4,500, yet they get reimbursed by Medicare for $2,000 which for her, puts a cloud on this particular request.

Hackett moved to AMEND the main motion by transferring the grant funds of $4,500 intended for Youth Advocates into the Emergency Fund.

Yes: 5 - Westover, Paden, Christianson, Esquiro, and Hackett

Absent: 2 - McConnell, and Reif

VI. PERSONS TO BE HEARD:

Jeff Budd was pleased with the Assembly's support. Michelle Mahoney and Elaine Gustavson expressed appreciation for fully funding SAFV's request. Whitney Johnson introduced herself as the new director of SAIL and thanked the Assembly for awarding SAIL's grant request.

VII. ADJOURNMENT

A motion was made by Christianson that this meeting be ADJOURNED. The meeting ADJOURNED at 6:23 PM by unanimous consent.

ATTEST:

_____

Colleen Ingman, MMC
Municipal Clerk

CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS
330 Harbor Drive
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Minutes - Draft

City and Borough Assembly

Mayor Cheryl Westover
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Municipal Clerk: Colleen Ingman, MMC

Tuesday, August 28, 2012 **6:00 PM** **Assembly Chambers**

WORKSESSION 5:00 - 5:50 PM

John Holst, Chair of the Adhoc Benchlands group and members Garry White, Roger Higley, Roger Hames, Steven Reifenstuhl, and Hugh Bevan presented various options for the Assembly to consider with regard to the sale of the Benchland's properties. It was decided later in the meeting to hold another worksession on this topic.

REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

Present: 6 - Westover, Paden, Christianson, Esquiro, Reif, and Hackett

Telephonic: 1 - McConnell

IV. CORRESPONDENCE/AGENDA CHANGES

School Update - Tim Fulton

A 1 12-118 Mathematics Audit Report

School Board Member, Tim Fulton, announced that student enrollment was up, including Special Education. Secure Rural Schools funds extended one year. Blatchley remodel is nearing completion, there are concerns with carpet in the locker rooms and water issues. If it doesn't improve they will be removing it. A discussion ensued on absenteeism. Christianson wondered if the school plans to address measures to counteract. To date, they have not. Westover pointed out that many parents are not able to help their children with core math. Reif mentioned the ability

for teachers to become more proficient at core math. The Math Audit is available online at sitkaschools.org.

V. PERSONS TO BE HEARD

Heidi Morrrison, spoke about essential oils - an extract from plants. Michelle Putz invited all to take part in an opportunity to get 1 Compost bag per family for a donation this Saturday during the Farmers Market. There is also an Open House at BIHA on September 15th from 11-1. Utility Director, Chris Brewton relayed that Sitka hosted the National Hydro Conference with 130 attendees. He extended his appreciation to the Visitors Bureau and the Harrigan Centennial Hall staff for all they did to contribute to its success.

VI. REPORTS

a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other

Mayor - Was in Bethel attending the Summer AML. She learned there will be little to no federal, Denali or state funding available next year. She welcomed folks to the NHA Convention last week. Meets with Garry White and Alaska Business Monthly tomorrow. Mayor had requested that the Blue Lake Dam Expansion worksession on September 10 be televised to better inform the public. Thanked Public Works crew for their work around town.
Administrator - Last Saturday attended the Farmers Market and noted the Travel Channel was there and on Sunday at the Sitka State Fair. Monday attended the hydro reception at the Raptor Center. Met with Senator Stedman and discussed legislative priorities. Wednesday went to the Library Feasibility meeting. Thanks to both Dave Wolff and Jay Sweeney, the city should have some revenue refunding on the city bonds - approximately $135,000.
Liaison Representatives - Hackett attended the Library Feasibility Committee, which is moving right along. Also attended the Mt.Edgecumbe Pool, meeting there was a lot of interest. Three different sites have been identified. The price tag has increased dramatically.
Clerk - Announced that for the State primary election all voting would be taking place at Harrigan Centennial Hall and that people have until 8:00 PM to cast their ballot.
Other - Mayor would like an update from Government Relations Director Campbell on the Tunicate species in the near future.

VII. CONSENT AGENDA

A 2 12-117 Approve the minutes of the August 14, 2012 Assembly meeting.

This item was APPROVED ON THE CONSENT AGENDA.

VIII. UNFINISHED BUSINESS:

B ORD 12-21A Amending SGC Section 13.06.010 entitled "Moorage Charges and

Fees".

Reif pointed out that this was only a portion of the proposed increases. He hopes the commercial fisherman will attend meetings this fall and offer ideas. Sitka has the largest harbor system in the state.

A motion was made by Christianson that this Ordinance be PASSED ON FINAL READING. The motion PASSED by the following vote.

Yes: 6 - Westover, Paden, Christianson, Esquiro, Reif, and Hackett

No: 1 - McConnell

C **ORD 12-25** Authorizing the sublease of space by Alaska Airlines, Inc. at the Sitka Rocky Gutierrez Airport Terminal Building.

Municipal Attorney Hillhouse pointed out this was a sample Consent to Sublease, it is a Department of Transportation document and it may be changed or modified but not substantially.

A motion was made by Hackett that this Ordinance be PASSED ON SECOND READING. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Paden, Christianson, Esquiro, Reif, and Hackett

D **ORD 12-26** Vacating the Right of Way at USS 3475 Carlson Subdivision Adjacent to Southeast Side of Lots 58C and 58D at 4624/4626 Halibut Point Road

Sponsors: Christianson and Reif

Municipal Clerk Ingman announced that the Nelsons could be available by phone if questions arose. Christianson confirmed that the Nelsons were called out of town due to critical illness of a family member.

Reif thinks this was a nice compromise. Christianson pointed out there are also physical limitations that give the property less value. Mayor was concerned with setting a precedent.

A motion was made by Christianson that this Ordinance be PASSED ON SECOND READING. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Paden, Christianson, Esquiro, Reif, and Hackett

IX. NEW BUSINESS:

E **12-115** Appoint Don Jones and Rick Armstrong to terms on the Police and Fire Commission

The Assembly thanked both for their willingness to serve.

Reif moved to appoint Rick Armstrong to the three-year term and Don Jones to the unexpired term on the Police and Fire Commission. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Paden, Christianson, Esquiro, Reif, and Hackett

F 12-116 Request to waive untimely filing of the 2011-2012 Senior Citizen real Property Tax Exemption applications submitted by Leo E. Evans

Gail Roderick read a prepared statement on behalf of the Evan's, where it was pointed out that the Senior Application that the Evan's initially submitted was intended and titled for both "Sales Tax and Property Tax Exemption."

Lindsey Evans believes this was something that needed to be better publicized. Gail Roderick also would like to see this benefit published. Hackett doesn't feel it is city's responsibility to put ads in the paper, but the city does need to make it clearer.

Municipal Assessor, Randy Hughes, stated the packet material was clear, but as far as the additional materials that were presented tonight the city may need to step back.

Municipal Attorney Hillhouse stated the Assembly has the option to send the request back to the Assessor as it now appears it would have been filed timely.

Christianson moved to REMAND Evan's Property Tax exemption back to the Assessor's office. The motion PASSED by the following vote.

Yes: 6 - Westover, McConnell, Paden, Christianson, Reif, and Hackett

No: 1 - Esquiro

G 12-119 Discussion/Direction to Municipal Administrator on development of city property

Sponsors: McConnell and Hackett

Barth Meyer had seen the city make a number of attempts in increasing the housing that is available. He expressed his concern with the Planning Commission setting lots at fair market value. The Planning Commission needs a good understanding of their flexibility before bringing things to the Assembly. Reif suggested SEDA's Option No. 2 which supports a Generic RFP.

Hackett would like someone to say we need "x" number of homes in this price bracket etc. She would also like to see a very specific proposal for a City Land Trust.

Benchlands - John Holst clarified that market value is set by sales, not by people sitting in an office.

The Assembly decided they needed a worksession dedicated to the Benchlands options. It was set for 5:30 PM on Thursday, September 20, 2012.

Motion by Reif to direct CBS to develop and release a generic RFP by the meeting of September 25th to create affordable housing to the greatest extent possible for the Old City Shops property. The motion PASSED by the following vote.

Yes: 6 - Westover, Paden, Christianson, Esquiro, Reif, and Hackett

Recused: 1 - McConnell

X. PERSONS TO BE HEARD:

None.

XII. ADJOURNMENT

A motion was made by Christianson that this meeting be ADJOURNED. The motion PASSED by an unanimous vote and the meeting ADJOURNED at 8:05 PM.

ATTEST

_____

Colleen Ingman, MMC
Municipal Clerk

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-123	**Version:**	1	**Name:**	
Type:	Appointment			**Status:**	PASSED
File created:	9/4/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012
Title:	Reappoint Judith Ozment to a term on the Sitka Historic Preservation Commission.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Appointment				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	APPROVED ON THE CONSENT AGENDA	

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This item is listed on your Consent Agenda should you wish to pull it off the following motion would be in order:

POSSIBLE MOTION

I MOVE TO reappoint Judith Ozment to a term on the Sitka Historic Preservation Commission.

Note:
Candidate's applications and any supporting documents can be viewed at the Municipal Clerk's office – 100 Lincoln Street, 3rd Floor.

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	ORD 12-18	**Version:**	1	**Name:**	
Type:	Ordinance			**Status:**	POSTPONDED INDEFINITELY
File created:	6/6/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012
Title:	Amending SGC at Section 4.12.020 Entitled "Property Subject to Tax" to increase the Biennial Motor Vehicle Registration Tax to be used for municipal roads				
Sponsors:	Bill Paden, Mike Reif				
Indexes:					
Code sections:					
Attachments:	ORD 12-18 Motor Vehicle ORD 12-18 Docs				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	POSTPONED INDEFINITELY	Pass
7/10/2012	1	City and Borough Assembly	POSTPONED	Pass
7/10/2012	1	City and Borough Assembly	MOTION	
6/27/2012	1	City and Borough Assembly	PASSED ON FIRST READING	Pass

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Sponsor: Mike Reif and
Mim McConnell

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-18

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL CODE AT SECTION 4.12.020 ENTITLED "PROPERTY SUBJECT TO TAX" TO INCREASE THE BIENNIAL MOTOR VEHICLE REGISTRATION TAX TO BE USED FOR MUNICIPAL ROADS

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.

3. **PURPOSE.** The purpose of this ordinance is to amend SGC 4.12.020 entitled "Property subject to tax" to add an additional biennial motor vehicle registration tax assessment to the tax levied pursuant to AS 28.10.431, to be paid at the same time the current motor vehicle registration tax is due. The additional tax as well as the current tax assessed under AS 28.10.431 shall be used for municipal road maintenance, road replacement, new roads, road extensions, and road infrastructures (i.e., sidewalks, gutters, bike lanes, etc.).

Based on applicable state law at AS 28.10.431(j), the tax increase will not take effect until January 1, 2014.

4. **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC 4.12.020 entitled "Property subject to tax" is amended as follows (new language underlined; deleted language stricken):

4.12.020 Property subject to tax.

A. All property within the corporate limits of the city and borough, both real and personal, of every nature, not exempt under the laws of the United States or the state of Alaska is subject to taxation for school and municipal purposes, and taxes upon such property must be assessed, levied and collected as provided herein, except the following property shall not be subject to taxation:

1. Personal property consisting of household goods, jewelry, intangibles and personal effects, including motorcycles and snowmobiles not used in business and all motor vehicles subject to the motor vehicle registration tax.

<u>B. Beginning January 1, 2014, any vehicle, including motor vehicles, electric vehicles and trailers, required to be registered with the Division of Motor Vehicles under</u>

AS 28.10.421, shall also be assessed an additional biennial motor vehicle registration tax to that assessed under AS 28.10.431.

1. The additional tax shall be paid at the same time that the motor vehicle registration tax is currently paid at the rate set out below:

   a. $ 50.00 – Motorcycles required to be registered under AS 28.10.421(b)(5);
   b. $100.00 – Non-commercial trailers required to be registered under AS 28.10.421(b)(6);
   c. $200.00 – Non-commercial vehicles required to be registered under AS 28.10.421(b)(1) and (b)(2); and
   d. $400.00 – Commercial vehicles required to be registered under AS 28.10.421(b)(3), (b)(4), and (c)(1)-(4).

2. If the motor vehicle registration tax is paid annually, the amount assessed under this subsection shall be half of the assessment set out above.

3. All biennial motor vehicle registration taxes collected under this subsection as well as the current tax collected under AS 28.10.431 shall be used for municipal road maintenance, road replacement, new roads, road extensions, and road infrastructures (i.e., sidewalks, gutters, bike lanes, etc.).

C~~B~~. All boats and vessels located within the boundaries of the city and borough on January 1st of any given year shall be subject to taxation under the same procedures and with the same assessment dates and due dates as personal property, except that valuation and taxation shall be on the basis of registered and certified length according to the schedule set forth below:

* * *

5. **EFFECTIVE DATE.** This ordinance shall become effective as of January 1, 2014.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 26 day of June, 2012.

_____
Cheryl Westover, Mayor

ATTEST:

_____
Colleen Ingman, MMC
Municipal Clerk

ORD 12-18 Item L
MOTOR VEHICLES

Sharon Joseph

From: Theresa Hillhouse
Sent: Wednesday, March 21, 2012 9:57 AM
To: Sharon Joseph
Subject: FW: Sitka DMV reg increase ordinance
Attachments: AO2011-125-2011_To Revise AO2010-81.pdf; 12.07.010_eff 2012-01-01.pdf; MVRT-Bristol Bay Borough_Ord 2009-11_clarifies Ord 2007-07.pdf; Ordinance No 2009-06_eff 01-01-2011.pdf; Ordinance No 2010-02_eff 01-01-2011_clarification.pdf

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From: Oates, Stacy V (DOA) [mailto:stacy.oates@alaska.gov]
Sent: Monday, March 19, 2012 6:21 PM
To: Theresa Hillhouse
Subject: RE: Sitka DMV reg increase ordinance

Theresa,

Attached are the following:

- Ordinances from a couple of municipalities. I included Unalaska, who charges an additional fee, but didn't clarify how it should be collected for commercial vehicles (just wanted to give you an example of why it helps for us to review the proposed ordinance first).
- A worksheet for calculating the effect of any change in MVRT. I've requested vehicle counts for you, which I'll forward as soon as they arrive.

Below is a chart with annual collections made for Sitka. You'll need to deduct the 8% collection fee to arrive at the amount remitted to Sitka.

FY12	FY11	FY10	FY09	FY08	FY07	FY06	FY05	FY04	FY03	
$ 51,393	$ 108,051	$ 108,543	$ 117,669	$ 120,247	$ 126,481	$ 115,293	$ 123,047	$ 121,801	$ 120,771	$

Regards,
Stacy

Stacy Oates
DMV Administrative Officer
1300 W Benson Blvd Ste 400, Anchorage, AK 99503-3392
Ph: 907-269-3782 Fx: 907-333-8615 fax Stacy.Oates@Alaska.gov

From: Theresa Hillhouse [mailto:hillhouse@cityofsitka.com]
Sent: Friday, March 16, 2012 3:35 PM
To: Oates, Stacy V (DOA)
Subject: Sitka DMV reg increase ordinance

Thanks for all your help. Please send a copy of the MOA DMV registration increase ordinance and Sitka spreadsheet re vehicles.

Article 5. Fees and Charges.

Section
411. Registration fees levied
421. Registration fee rates
423. Emission control inspection program fees
431. Biennial motor vehicle registration tax
441. Schedule of other fees and charges

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 71 et seq.

60 C.J.S., Motor Vehicles, § 245 et seq.

Sec. 28.10.411. Registration fees levied. (a) For every year during any part of which a vehicle is subject to registration under this chapter, a registration fee shall be paid to the department at the time of original registration and at each biennial renewal of registration after that time.

(b) *[Repealed, 1983 Initiative Proposal No. 2, § 6.]*

(c) *[Repealed, § 6 ch 70 SLA 1986.]*

(d) *[Repealed, § 41 ch 37 SLA 1986.]*

(e) *[Repealed, § 3 ch 89 SLA 1987.]*

(f) A resident 65 years of age or older on January 1 of the year the vehicle is registered or a resident with a disability that limits or impairs the ability to walk and who provides proof of that disability as provided in 23 C.F.R. 1235.2 is entitled to an exemption from the registration fee required under this section for one vehicle subject to registration under AS 28.10.421(b)(1), (2), (5), or (6). An exemption may not be granted except upon written application for the exemption on a form prescribed by the department. (§ 7 ch 178 SLA 1978; am 1983 Initiative Proposal No. 2, § 6; am § 85 ch 6 SLA 1984; am § 41 ch 37 SLA 1986; am § 6 ch 60 SLA 1986; am § 6 ch 70 SLA 1986; am § 3 ch 89 SLA 1987; am § 58 ch 63 SLA 1993; am §§ 6, 7 ch 44 SLA 1996; am § 2 ch 128 SLA 1998; am § 4 ch 46 SLA 2007)

Effect of amendments. — The 2007 amendment, effective July 4, 2007, inserted "or a resident with a disability that limits or impairs the ability to walk and who provides proof of that disability as provided in 23 C.F.R. 1235.2" in the first sentence of subsection (f).

Editor's notes. — Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

Sec. 28.10.420. Assignment. [Repealed, § 7 ch 178 SLA 1978.]

Sec. 28.10.421. Registration fee rates. (a) Unless otherwise provided by law,

(1) the fees prescribed in this section shall be paid to the department at the times provided under AS 28.10.108 and 28.10.111; and

(2) an additional fee of $10 shall be added to the registration fee set out in this section for registration not conducted by mail or not conducted at an emissions inspection station or contract office offering vehicle registration services; the department may waive this additional fee for a good cause based on criteria established in regulations adopted by the department.

(b) The biennial registration fees under this subsection are imposed within the following classifications for:

(1) a passenger vehicle, low-speed vehicle, or motor home not used or maintained for the transportation of persons or property for hire or for other commercial use $100;

(2) a pick-up truck or a van not exceeding 10,000 pounds unladen weight and not registered in the name of a company or business $100;

(3) a taxicab $160;

(4) a motor bus with a
commercial purposes in
(5) a motorcycle or a
(6) a trailer not used
hire or for other comme
trailer, box trailer, utilit
for rent .....
(c) The biennial regi
upon the actual unlader
or upon the actual weig
commissioner or the co
vehicle and a motor vehi
of a company or busines
for hire, excepting taxic
of property for hire or
truck, wrecker, tow car,
(1) up to and includi
(2) more than 5,000
(3) more than 12,000
(4) more than 18,000
(d) The special regist
otherwise specified, for
(1) a historic vehicle
(A) AS 28.10.181(b)(
purpose of historical exl
under AS 28.10.181(b) .
(B) AS 28.10.181(b)(
plus the fee required fo
is eligible for the fee d
subparagraph shall be
historic plates;
(C) AS 28.10.181(b)(
purpose of historical exl
under AS 28.10.181(b) .
(2) special request pl
(A) Alaska National
(B) veterans or retir
(C) recipients of the
(D) owners of custon
(E) Iditarod race fini
(F) other special req
plus the fee required f
paragraph shall be coll
request plates;
(3) a vehicle owned b
or by a resident 65 yea
on a form prescribed b
(4) a vehicle owned
(5) a vehicle owned
required for that vehic
(6) a vehicle owned
28.10.181 .....
(7) a snowmobile or

(4) a motor bus with a seating capacity for 20 or more persons and used exclusively for commercial purposes in the transporting of visitors or tourists $300;

(5) a motorcycle or a motor-driven cycle $60;

(6) a trailer not used or maintained for the transportation of persons or property for hire or for other commercial use, including, but not limited to, a boat trailer, baggage trailer, box trailer, utility trailer, house trailer, travel trailer, or a trailer rented or offered for rent ..... $30.

(c) The biennial registration fees under this subsection are imposed and are based upon the actual unladen weight as established by the manufacturer's advertised weight or upon the actual weight, which the owner shall furnish, subject to the approval of the commissioner or the commissioner's representative, for a vehicle, including a low-speed vehicle and a motor vehicle pulling a trailer or semi-trailer, that is registered in the name of a company or business, or is used or maintained for the transportation of passengers for hire, excepting taxicabs and buses under (b) of this section, or for the transportation of property for hire or for other commercial purposes, including a low-speed vehicle, truck, wrecker, tow car, hearse, ambulance, and tractor, as follows:

(1) up to and including 5,000 pounds $180;

(2) more than 5,000 pounds to and including 12,000 pounds $268;

(3) more than 12,000 pounds to and including 18,000 pounds $516;

(4) more than 18,000 pounds ..... $662.

(d) The special registration fees under this subsection are imposed biennially, unless otherwise specified, for

(1) a historic vehicle registered under

(A) AS 28.10.181(b)(1) and that is driven or moved on a highway for the primary purpose of historical exhibition or similar activity, one time only upon initial registration under AS 28.10.181(b) $10;

(B) AS 28.10.181(b)(2) ..... $30 plus the fee required for that vehicle under (b) of this section, unless the historic vehicle is eligible for the fee described under (C) of this paragraph; the fee required by this subparagraph shall be collected only on the first issuance and on the replacement of the historic plates;

(C) AS 28.10.181(b)(2) and that is driven or moved on a highway for the primary purpose of historical exhibition or similar activity, one time only upon initial registration under AS 28.10.181(b) $10;

(2) special request plates for

(A) Alaska National Guard personnel $30;

(B) veterans or retired veterans $30;

(C) recipients of the Purple Heart ..... none;

(D) owners of custom collector vehicles $50;

(E) Iditarod race finishers $50;

(F) other special request plates ..... $30; plus the fee required for that vehicle under (b) of this section; the fee required by this paragraph shall be collected only on the first issuance and on the replacement of special request plates;

(3) a vehicle owned by a person with a disability and registered under AS 28.10.181(d), or by a resident 65 years of age or older who files a written application for an exemption on a form prescribed by the department ..... none;

(4) a vehicle owned by the state ..... none;

(5) a vehicle owned by an elected state official ..... the fee required for that vehicle under (b), (c), (h), or (i) of this section;

(6) a vehicle owned by a rancher, farmer, or dairyman and registered under AS 28.10.181 ..... $68;

(7) a snowmobile or off-highway vehicle $10;

(8) an amateur mobile radio station vehicle,

(A) with a transceiver capable of less than 5-band operation ..... the fee required for that vehicle under (b) or (c) of this section;

(B) in recognition of service to the public a mobile amateur radio station owned by an amateur with general class or higher license, provided the station must be satisfactorily proved capable of operating on at least five bands from 160 through 10 meters, must have an antenna, and must have a power supply and wiring as a permanent part of the vehicle; the transmitting unit may be removed from the car for service or dry storage ..... none for a mobile amateur radio station vehicle included in (b)(1) or (2) of this section;

(9) dealer registration plates

(A) the initial set of plates $88;

(B) each subsequent set of plates $50;

(10) a vehicle owned by a municipality or charitable organization meeting the requirements of AS 28.10.181(e) $10;

(11) a vehicle owned by a Pearl Harbor survivor, a former prisoner of war, a recipient of the Medal of Honor awarded by the President of the United States in the name of the United States Congress, or the spouse, parent, guardian, brother, sister, or dependent of a member of the United States armed forces killed in the line of duty ..... none;

(12) special request university plates ..... $50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected only on the first issuance and on the replacement of special request plates; the commissioner of administration shall separately account by university campus designation for the fees received under this paragraph that the department deposits in the general fund; the annual estimated balance in the accounts that is in excess of the cost of issuing special request university plates may be appropriated by the legislature for the support of programs at each campus;

(13) special request dog mushing plates ..... $50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected only on the first issuance and on the replacement of special request plates; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature for the support of programs benefiting dog mushing;

(14) special request Alaska children's trust plates ..... $100 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected only on the first issuance and the replacement of special request plates; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature into the Alaska children's trust grant account established in AS 37.14.205;

(15) special request plates commemorating the arts ..... $150 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature for the support of programs benefiting the arts;

(16) special request plates commemorating Alaska veterans $100

plus a fee of $35 and the fee required for that vehicle under (b), (c), (h), or (i) of this section; the $100 fee required by this paragraph shall be collected only on the first issuance of and the replacement of the commemorative veterans' plates; the $35 fee required by this paragraph shall be collected biennially in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature to the Alaska veterans' cemetery fund created under AS 37.05.600 and for the support of programs benefiting Alaska veterans;

(17) special request plates commemorating and supporting troops ..... $40 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the $40 fee required by this paragraph shall be collected on issuance and biennial renewal in the same manner as the fee required under (b), (c), (h), or (i) of this section; the commissioner of administration shall separately account for the fees received under this paragraph that the department deposits in the general fund; notwithstanding (g) of this section, the annual estimated balance in the account that is in excess of the cost of issuing special request plates may be appropriated by the legislature to the organization for which the specialty license plate was purchased for the benefit of Alaska troops and their families;

(18) special request plates

(A) for active firefighter and emergency medical service provider $30;

(B) for former firefighter and emergency medical service provider ..... $50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the fee required by (A) and (B) of this paragraph shall be collected only on the first issuance of and the replacement of the plates;

(19) special request fraternal organization member plates ..... $50 plus the fee required for that vehicle under (b), (c), (h), or (i) of this section; the $50 fee required by this paragraph shall be collected only on the first issuance of and the replacement of the plates.

(e) A vehicle registered under this section which, by the removal of seats, a camper unit, a canopy or other equipment, may be converted into a vehicle on which the registration fee is computed on a different basis or in a different amount may not be driven or moved with seats, camper unit, canopy or other equipment removed unless the other applicable registration fee is paid.

(f) In addition to the fees imposed under (b) and (d) of this section, the following special biennial registration fee is imposed upon renewal of registration for a passenger vehicle, motor home, pick-up truck, or a van with special request Winter Olympics commemorative plates ..... $60.

(g) The fees collected by the department under this section shall be deposited in the general fund. The Department of Administration shall separately account for three percent of the fees collected under this section and deposited in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations for administration of AS 28.10.021(a) and AS 28.22 (Alaska Mandatory Automobile Insurance Act).

(h) The annual registration fees under this subsection for vehicles, including low-speed vehicles, used for commercial purposes are imposed and are based upon the actual unladen weight as established by the manufacturer's advertised weight or upon the actual weight, which the owner shall furnish, subject to the approval of the commissioner or the commissioner's representative, as follows:

(1) up to and including 5,000 pounds $90;

(2) more than 5,000 pounds to and including 12,000 pounds $134;

(3) more than 12,000 pounds to and including 18,000 pounds $258;

(4) more than 18,000 pounds ..... $331.

(i) A one-time registration fee of $20 is imposed upon initial registration for a trailer or semi-trailer used for commercial purposes. (§ 7 ch 178 SLA 1978; am §§ 4, 5 ch 54 SLA 1979; am § 2 ch 151 SLA 1984; am § 41 ch 21 SLA 1985; am §§ 7 — 9 ch 60 SLA 1986; am § 1 ch 70 SLA 1986; am §§ 6 — 8 ch 24 SLA 1988; am § 2 ch 72 SLA 1989; am § 2 ch 91 SLA 1989; am §§ 17, 18 ch 108 SLA 1989; am §§ 5, 6 ch 115 SLA 1989; am §§ 6, 9 ch 20 SLA 1990; am § 13 ch 90 SLA 1991; am § 4 ch 8 SLA 1993; am §§ 59, 60, 79 ch 63 SLA 1993; § 2 ch 56 SLA 1995; am §§ 8 — 12 ch 44 SLA 1996; am § 3 ch 97 SLA 1996; am § 2 ch 5 SLA 1997; am § 3 ch 42 SLA 1997; am § 2 ch 36 SLA 1998; am § 18 ch 48 SLA 1998; am § 5 ch 88 SLA 1998; am §§ 1, 2, 3 ch 5 SLA 1999; am § 3 ch 44 SLA 2001; am §§ 2, 3 ch 11 SLA 2002; am § 2 ch 31 SLA 2002; am § 3 ch 56 SLA 2002; am §§ 1 — 4 ch 38 SLA 2003; am § 2 ch 68 SLA 2003; am § 13 ch 96 SLA 2005; am §§ 1 — 3 ch 95 SLA 2006; am §§ 5, 6 ch 14 SLA 2007; am § 5 ch 46 SLA 2007; am § 2 ch 2 SLA 2009; am § 2 ch 21 SLA 2009; am § 3 ch 115 SLA 2010; am § 2 ch 116 SLA 2010)

Revisor's notes. — Paragraph (d)(13) was enacted as (16); renumbered in 1996. Paragraph (d)(15) was enacted as paragraph (d)(14). Renumbered in 1998.

Effect of amendments. — The 2001 amendment, effective July 1, 2001, in paragraph (d)(2), added present subparagraph (E) and redesignated former subparagraph (E) as subparagraph (F).

The first 2002 amendment, effective July 1, 2002, in paragraph (d)(1) added "registered under" at the end of the introductory language, rewrote subparagraph (A), and added subparagraphs (B) and (C); and in paragraph (d)(2) substituted "collector vehicles" for "collection vehicles" in subparagraph (D), deleted former subparagraph (E), which specified the fee for owners of antique vehicles, and redesignated former subparagraph (F) as subparagraph (E).

The second 2002 amendment, effective January 1, 2003, updated a section reference in paragraph (d)(3).

The third 2002 amendment, effective September 17, 2002, substituted "person with a disability" for "disabled veteran or other handicapped person" in paragraph (d)(3) and made stylistic changes.

The first 2003 amendment, effective August 31, 2003, increased the fees in subsections (b), (c), (h), and (i).

The second 2003 amendment, effective September 9, 2003, added paragraph (d)(16).

The 2005 amendment, effective August 28, 2005, updated subsection references throughout subsection (d).

The 2006 amendment, effective October 28, 2006, inserted "low-speed vehicle" in paragraph (b)(1) and twice in the introductory language of subsection (c), inserted "including low-speed vehicles" in paragraph (h), and made minor stylistic changes.

The first 2007 amendment, effective May 29, 2007, substituted "none" for "$30" in paragraph (d)(2), and added references to references to Medal of Honor recipients and relatives of members of the armed forces killed in the line of duty in paragraph (d)(11).

The second 2007 amendment, effective July 4, 2007, added paragraph (d)(17).

The first 2009 amendment, effective June 23, 2009, in paragraph (d)(2), added subparagraph (E), and redesignated former subparagraph (E) as subparagraph (F).

The second 2009 amendment, effective August 23, 2009, in paragraph (d)(16), added "to the Alaska veterans' cemetery fund created under AS 37.05.600 and" following "appropriated by the legislature".

The first 2010 amendment, effective September 29, 2010, in (d)(14), substituted "Alaska children's trust grant account established in AS 37.14.205" for "principal of the Alaska children's trust under AS 37.14.200".

The second 2010 amendment, effective July 2, 2010, added (d)(18) and (19).

Editor's notes. — Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

Sec. 28.10.423. Emission control inspection program fees. In addition to the biennial registration fee specified in AS 28.10.421, a $2 fee is imposed upon every vehicle required to be inspected under an emission control program established under AS 46.14.400 or 46.14.510. This fee shall be collected at the same time and in the same manner as the registration fee. (§ 2 ch 56 SLA 1985; am § 4 ch 74 SLA 1993; am § 3 ch 56 SLA 1995; am § 13 ch 44 SLA 1996)

Editor's notes. — Section 20, ch. 44, SLA 1996 amends § 7, ch. 56, SLA 1995 to change the effective date for the 1995 amendment to AS 28.10.423 from July 1, 1996 to January 1, 1997.

Sec. 28.10.430. Release by lienholder. [Repealed, § 7 ch 178 SLA 1978.]

Sec. 28.10.431. Biennial motor vehicle registration tax. (a) There is levied a motor vehicle registration tax within each municipality that elects, by passage of an appropriate ordinance, to come under this section. A municipality shall file a written notice of election with the department and may not rescind the notice for a subsequent

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Motor Vehicle
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(c) The regis
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SLA 1989; am § 2
A 1989; am §§ 6,
1 §§ 59, 60, 79 ch
3 ch 97 SLA 1996;
98; am § 18 ch 48
3 ch 44 SLA 2001;
2002; am §§ 1 —
m §§ 1 — 3 ch 95
2 ch 2 SLA 2009;
1 2010)

ive October 28, 2006,
paragraph (b)(1) and
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paragraph (d)(2), and
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in paragraph (d)(11).
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fiscal year. The notice must be filed on or before January 1 of the year preceding the year election under this section is to become effective. If a municipality has, before October 15, 1978, levied a motor vehicle registration or ad valorem tax that has been repealed by a vote of the people at any regular or special municipal election, then the election provided for in this subsection is not effective until the ordinance passed by the local governing body has been approved by the people at the next regularly scheduled general or special municipal election.

(b) The biennial tax is levied upon motor vehicles subject to the registration fee under AS 28.10.411 and 28.10.421 and is based upon the age of vehicles as determined by model year in the first year of the biennial period, according to the following schedule:

	Tax According to Age of Vehicle Since Model Year:							
	1st	2nd	3rd	4th	5th	6th	7th	8th or over
Motor Vehicle								
(1) motorcycle	$ 17	$ 15	$ 13	$ 10	$ 7	$ 5	$ 4	$ 4
(2) vehicles specified in AS 28.10.421(b)(1)	121	99	77	55	39	28	19	16
(3) vehicles specified in AS 28.10.421(b)(3)	121	99	77	55	39	28	19	16
(4) vehicles specified in AS 28.10.421 (c)(1)-(4)								
5,000 pounds or less	121	99	77	55	39	28	19	16
5,001-12,000 pounds	198	154	121	99	77	55	33	22
12,001-18,000 pounds	447	392	348	304	260	227	205	194
18,001 pounds or over	546	469	403	348	304	260	216	194
(5) vehicles specified in AS 28.10.421(b)(4)	198	154	121	99	77	55	33	22
(6) vehicles specified in AS 28.10.421(b)(6)	17	15	13	10	7	5	4	4
(7) vehicles specified in AS 28.10.421(d)(8)	121	99	77	55	39	28	19	16
(8) vehicles specified in AS 28.10.421(b)(2)	121	99	77	55	39	28	19	16
(9) vehicles eligible for dealer plates under AS 28.10.421(d)(9).	88							

(c) The registration tax shall be levied, collected, enforced and otherwise administered in the same manner as provided for the registration fees in this chapter. Only one

registration tax may be collected with respect to the same motor vehicle in the year for which the tax is paid.

(d) If a person has paid both the registration fee levied in AS 28.10.411 and 28.10.421 and the registration tax levied in this section, and the department determines that the payor is entitled to a refund in whole or in part of the registration tax, the department shall make the refund to which the person is entitled. A refund may not be made unless application for a refund is filed with the department by December 31 of the year following the year for which the refund is claimed.

(e) The department shall refund money collected under this section, less eight percent as collection costs, to a municipality for which the money was collected, as determined by (1) the address of residence of an individual required to pay the tax, or (2) the situs of the vehicle if the vehicle is not owned by an individual; the tax situs is the location at which the motor vehicle is usually, normally, or regularly kept or used during the registration period. For the first year in which the tax is levied within a municipality, the department may retain actual costs of collection of the tax within the municipality as determined by the department.

(f) Money received by an organized borough under this section shall be allocated by the borough by ordinance for city, area outside city, and service area purposes within the borough.

(g) Payment of the registration tax is in lieu of all local use taxes and ad valorem taxes on motor vehicles subject to the tax. A municipality which elects to come under the provisions of this section may not levy use or ad valorem taxes on motor vehicles subject to the registration tax during a fiscal year in which the election is in effect.

(h) A vehicle owned by a former prisoner of war exempted from registration fees under AS 28.10.421(d)(11) is subject to a motor vehicle registration tax under this section.

(i) *[Repealed, § 28 ch 90 SLA 1991.]*

(j) A municipality that imposes a motor vehicle registration tax as described under (a) of this section may also increase or decrease the scheduled amount of tax described under (b) or (*l*) of this section by passage of an appropriate ordinance. A municipality that chooses to change the tax imposed under (b) or (*l*) of this section shall file a written notice of the change with the department by January 1 of the year preceding the year in which the change in tax is to take effect. A municipality may not change the amount of the tax imposed under this section more than once every two years. The department may charge a municipality a one-time fee to cover the cost to the department of implementing a change under this subsection.

(k) A vehicle registration application and renewal application for vehicles subject to a municipal vehicle registration tax shall itemize the total amount due in a manner that separately shows the amount of vehicle registration tax imposed by the municipality.

(*l*) Notwithstanding (b) of this section, an annual tax is levied upon vehicles specified in AS 28.10.421(c) and subject to the registration fee under AS 28.10.411 and 28.10.421 if the owner elects to register the vehicle annually as allowed under AS 28.10.108(f). The tax is based on the age of the vehicle as determined by model year according to the following schedule:

	Tax According to Age of Vehicle Since Model Year:							
	1st	2nd	3rd	4th	5th	6th	7th	8th or over
Motor Vehicle 5,000 pounds or less	$ 66	$ 55	$ 44	$ 33	$ 22	$ 17	$ 11	$ 8

	Tax According to Age of Vehicle Since Model Year:							
	1st	2nd	3rd	4th	5th	6th	7th	8th or over
Motor Vehicle								
5,001-12,000 pounds	110	88	66	55	44	33	22	11
12,001-18,000 pounds	240	207	185	163	141	119	107	97
18,001 pounds or over	295	251	218	185	161	141	119	97.

(§ 7 ch 178 SLA 1978; am § 3 ch 151 SLA 1984; am § 48 ch 138 SLA 1986; am § 28 ch 90 SLA 1991; am § 34 ch 30 SLA 1992; am § 61 ch 63 SLA 1993; am §§ 14, 15 ch 44 SLA 1996; am § 1 ch 76 SLA 1996; am §§ 3, 4 ch 5 SLA 1997; am § 29 ch 32 SLA 1997; am §§ 4 — 6 ch 5 SLA 1999)

Revisor's notes. — Subsections (j) and (k) were enacted as (i) and (j) respectively. Relettered upon enactment in 1996. In 2009, in (b)(1), "$4" was substituted for "$2" to correct a typographical error in ch. 32, SLA 1997.

Editor's notes. — Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

Opinions of attorney general. — Since a borough's election to request the department to collect the motor vehicle registration tax on its behalf and to remit those taxes to it was first in time, it should take precedence over the later request by a city within the borough. February 19, 1986, Op. Att'y Gen.

Sec. 28.10.440. Dismantled vehicle. [Repealed, § 7 ch 178 SLA 1978.]

Sec. 28.10.441. Schedule of other fees and charges. The following fees and charges are imposed by the department for the stated services that it provides:

(1) title fee, including transfer of title $15;
(2) lien filing fee $15;
(3) replacement of any registration plate set, including special request plates $5;
(4) duplicate of original certificate of title $15;
(5) duplicate of certificate of registration $2;
(6) temporary preregistration permit issued under AS 28.10.031 ..... none;
(7) special transport permit issued under AS 28.10.151 ..... $5;
(8) special permit for vehicle used for transport of a person with a disability issued under AS 28.10.495 ..... none.

(§ 7 ch 178 SLA 1978; am § 28 ch 85 SLA 1988; am § 4 ch 56 SLA 2002; am § 5 ch 38 SLA 2003)

Effect of amendments. — The 2002 amendment, effective September 17, 2002, substituted "a person with a disability" for "disabled or handicapped person" in paragraph (8).

The 2003 amendment, effective June 3, 2003, increased the fees in paragraphs (1), (2), and (4) and made a stylistic change.

Article 6. Registration and Title Violations.

Section
451. Unlawful to violate provisions requiring registration and title
461. Driving vehicle without evidence of registration
471. Driving vehicle when registration suspended or revoked or permit expired
481. Improper use of evidence of registration or certificate of title
491. Felonies relating to title, registration, identification number, and removal and representation of vehicles

Alaska Department of Administration
Division of Motor Vehicles

2011 Currently Registered Vehicles

	PSNGR	MTRCYCLE	COMM. TRAILER	TRAILER	COMM. TRUCK	PICKUP	BUS	SNOW MOBILE	ALL VEHICLES
OTHER OUTSIDE	16,710	1,627	1,092	1,965	913	5,708	79	211	28,305
OTHER AK	9,211	500	193	3,066	1,008	7,657	263	3,160	25,058
WASHINGTON	958	82	123	182	207	429	2	28	2,011
MUNI OF ANCHORAGE	192,733	11,819	2,934	34,996	14,050	64,723	858	15,894	338,007
FAIRBANKS N/STAR BOR	67,004	5,352	1,490	20,507	8,136	35,236	465	11,546	149,736
CITY & BOR OF JUNEAU	22,510	1,265	444	3,634	2,260	8,112	344	458	39,027
KETCHIKAN GATEWAY BOR	8,241	596	130	2,014	960	4,266	153	170	16,530
CITY & BOR OF SITKA	4,776	304	74	1,276	564	2,685	58	80	9,817
NOME	925	42	29	68	391	1,232	14	78	2,779
HAINES	1,786	201	54	701	263	1,267	57	134	4,463
YAKUTAT	347	14	18	24	86	307	1	4	801
BETHEL	1,751	67	15	465	351	1,472	19	482	4,622
TOK	1,097	98	48	599	127	1,081	21	276	3,347
GLENNALLEN	1,127	68	30	612	162	989	36	335	3,359
DELTA JUNCTION	3,392	229	95	1,858	333	2,646	32	548	9,133
VALDEZ	2,621	233	59	1,144	450	1,867	27	619	7,020
CORDOVA	1,402	116	165	499	194	1,455	6	95	3,932
NORTH SLOPE BOR	873	32	45	86	911	636	19	340	2,942
UNALASKA	1,166	93	130	109	744	825	5	15	3,087
MATSU BOROUGH	64,764	4,238	1,409	21,220	3,524	36,201	342	10,642	142,340
CRAIG	799	49	19	257	150	698	8	24	2,004
KODIAK ISLAND BOR	7,245	466	143	1,618	745	4,586	45	195	15,043
BRISTOL BAY BOR	864	48	56	201	351	1,106	14	34	2,674
SKAGWAY	860	112	27	236	173	568	144	26	2,146
NENANA	644	31	8	257	71	390	8	92	1,501
PETERSBURG	1,708	144	94	801	212	1,455	10	163	4,587
DILLINGHAM	1,135	50	7	149	175	1,033	16	149	2,714
KOTZEBUE	333	14	6	36	101	291	0	254	1,035
KENAI PENINSULA BOROUGH	41,390	2,985	1,222	17,565	4,118	27,678	238	5,629	100,825
WRANGELL	1,214	105	10	228	108	1,065	5	133	2,868
METLAKATLA	419	11	0	26	15	248	8	1	728
FINAL TOTAL	460,005	30,991	10,169	116,399	41,853	217,912	3,297	51,815	932,441

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	ORD 12-27	**Version:**	1	**Name:**	
Type:	Ordinance			**Status:**	FAILED
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/25/2012
Title:	Amending SGC Title 21 Subdivision Code and Title 22 Zoning to clarify the zero lot line regulations and eliminate inconsistencies				
Sponsors:	Administrator's Office				
Indexes:					
Code sections:					
Attachments:	ORD 12-27 docs				

Date	Ver.	Action By	Action	Result
9/25/2012	1	City and Borough Assembly		
9/25/2012	1	City and Borough Assembly		
9/25/2012	1	City and Borough Assembly		
9/11/2012	1	City and Borough Assembly	PASSED ON FIRST READING	Pass

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City and Borough of Sitka
100 Lincoln Street • Sitka, Alaska 99835

Memorandum

To: Jim Dinley, Municipal Administrator
Mayor Westover and Assembly Members

From: Wells Williams, Planning Director

Subject: Ordinance 2012-27 Amending SGC Title 21 Subdivision Code and Title 22 Zoning Code to Clarify the Zero Lot Line Regulations and Eliminate Inconsistencies

Date: September 4, 2012

The Sitka Planning Commission is unanimously recommending approval of a proposed series of revisions governing zero lot lines. The proposed revisions are in the subdivision and zoning titles of the Sitka General Code. The board's recommendation was made, following the hearings, on July 17, 2012.

The proposals were submitted following the discussion of the Menendez conditional use request. Connor and Valorie Nelson objected to the Menendez request, in part, due to concerns they had about the residential nature of zero lot line subdivisions. There was interest expressed by Assembly members about revising the code to ensure that there could not be commercial uses in zero lot lines. The Planning Office prepared a proposal to alleviate those concerns and eliminate inconsistencies between the two series of regulations.

The proposal remedies the situation by 1) striking the zoning language from the subdivision regulations, 2) creating a regulatory definition for residential zero lot lines in the zoning code, and 3) adding the use "residential zero lot line" in the Residential Land Use table. The residential zero lot line definition limits the types of activities that can occur in the zero lot lines in all zones. The potential for conflict between the subdivision and zoning regulations is reduced.

The regulatory definition of "Residential Zero Line" reads as:

"Zero lot, residential" is a structure containing two adjacent single-family housing units that share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line. The uses allowed in Zero Lot Line, Residential are limited to residential uses, home occupations as regulated by other sections of SGC Title 22 and day cares accommodating up to four children of paying non family member clients.

Connor and Valorie Nelson commented on the proposal during the May 1st and June 19th Planning Commission meetings. Neither one of them were present during the July 17th meeting. The Nelson's comments are described, in detail, in the attached minutes of those meetings. Their concerns include allowing home occupations in zero lot lines would devalue property, would be retroactive, and were an attempt to invalidate the lawsuit that was filed involving the Menendez conditional use permit.

There was not any other public comment on the proposal.

Recommended Action:

Receive public comment and approve the ordinance.

Informational Notes:

The proposal currently appears in two complementary forms. A proposal was submitted for public and Planning Commission revision and is dated April 26, 2012. This nine page version puts the proposal in context by including most, if not all, of the zoning and subdivision code changes that cover zero lot lines.

Ordinance 2012 – 27 is a subset of the April 26th version and only includes those sections that were revised. The ordinance is much shorter since it does not include the unmodified sections.

The zoning code has a definition of "zero lot line". That term was retained, in a revised form, to provide consistency between the zoning and subdivision regulations. To reinforce the residential nature of zero lot lines, a definition and use for term "residential zero lot line" was added. This second term appears in the table 22.16.015-1 of the zoning code.

SPONSOR: ADMINISTRATOR

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2012 – 27

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING SITKA GENERAL CODE TITLE 21 SUBDIVISION CODE AND TITLE 22 ZONING TO CLARIFY THE ZERO LOT LINE REGULATIONS AND ELIMINATE INCONSISTENCIES

BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.

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

3. PURPOSE. The purposes of this ordinance is to 1) reinforce the residential treatment of zero lot line dwelling units and subdivisions and 2) clarify internally inconsistent provisions in the municipal land use regulations. The purposes are achieved by eliminating zoning code language in the zero lot line section of the subdivision regulations, creating a regulatory definition of the use "residential zero lot line", and adding the use "residential zero lot line" to the appropriate zoning land use table.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough to revise the following sections of SGC Titles 21 and 22 as listed below:

A. 21.24.030 Zoning requirements.

~~Zero lot line subdivisions may be permitted in the R-1 (single and duplex residential), R-1 MH (single, duplex and single mobile home), R-1 LD (single and duplex low density), R-1 LDMH (single, duplex, and single mobile home low density), R-2 (multifamily residential), and R-2 MHP (multifamily residential including mobile homes and mobile home parks) zoning districts in accordance with the provisions of Title 22, Zoning~~.

B. 21.08.260 "Z". "Zero lot line subdivision" means a technique whereby parcels may be created that might not otherwise conform to minimum size standards and which allows ~~any~~ two ~~or more~~ adjacent single-family housing units to share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line.

C ~~22.08.580 Lot, zero line. "Zero lot line" means the common property line separating two lots upon which one dwelling may be located without a setback providing a proper fire wall rating is utilized. All other aspects are the same as in conventional development. When lots are proposed for this type of development, site plan approval shall be required as part of the subdivision approval.~~

22.08.580 Lot, zero line. "Zero lot line" is a structure containing two adjacent single-family housing units that share a common side or rear lot line and shall be provided one-hour fire rated

assemblies on each side of the adjoining property line. The uses allowed in Zero Lot Line, Residential are limited to residential uses, home occupations as regulated by other sections of SGC Title 22 and day cares accommodating up to four children of paying non family member clients. Also see Zero lot, residential. (Ord. 02-1683 § 4 (part), 2002.)

D. 22.08.722 "Zero lot, residential" is a structure containing two adjacent single-family housing units that share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line. The uses allowed in Zero Lot Line, Residential are limited to residential uses, home occupations as regulated by other sections of SGC Title 22 and day cares accommodating up to four children of paying non family member clients. Also see Lot, zero line.

E.

Table 22.16.015-1
Residential Land Uses

Zones	P(1)	SF	SFLD	R-1	R-1 MH	R-1 LDMH	R-2	R-2 MHP	CBD (11, 12)	C-1 (11)	C-2 (11)	WD (2, 11)	I	GI (3, 10)	LI(3)	R	OS	SC (13)
RESIDENTIAL																		
• Single-family detached		P	P	P(4)	P(4)	P(4)	P(4)	P(4)		P	P	P		P	P	P	P	
• Townhouse				C(5)	C(5)	C(5)	C(5)	C(5)	C	P	P	P		C	C			
• Duplex				P	P		P	P		P	P	P		P	P			
• Residential zero lot line				P	P	P	P	P		P	P	P						
• Multiple-family				C(5)	C(5)	C(5)	P(5)	P(5)	P(5,8)	P(5)	P(5)	P(5)		C	C			
• Single manufactured home on an individual lot					P	P		P			P			C	C			
• Mobile home park								P			P	P						
GROUP RESIDENCES														C	C			
• Assisted living	C						C	C						C	C			
• Bunkhouse for transient workers							C	C				C		C				
• Dormitory	C(4)						C	C										
• Quasi-institutional	C			C	C	C	C	C						C	C			
TEMPORARY LODGING																		
• Hostel							C	C		P	P	P						
• Hotel/motel									P	P	P	P		PU/ CS	C	C		
• Bed and breakfast				C(7)	C(7)	C(7)	C(8)	C(8)	P	P	P	P		P	C			
• Short-term rental				C	C	C	C	C	P	P(9)	P(9)	P(9)		P	C	P(9)		
• Rooming house							C	C	C	P	P	P		C	C			
• Lodge										P	P	P		PU/ CS	C			
• Limited storage				C(6)	C(6)	C(6)	C(6)	C(6)						P	C			

F. Consistent with the clarifications above, Footnote 6 of SGC Table 22.16.015-3 General Services is revised to read as follows:

Day cares with four children or less not related to the provider are a permitted use in the R-1 and related zones. ~~and establishments~~ Day cares with five children or more not related to the provider are a conditional use , in owner occupied detached single family dwellings only, in the R-1 and related zones.

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 25th day of September 2012.

_____
Cheryl Westover, Mayor

ATTEST:

_____
Colleen Ingman, CMC
Municipal Clerk

PROPOSED ZERO LOT LINE CODE REVISIONS

DRAFT PREPARED APRIL 26, 2012
Standard font – existing code
Strike out – proposed for deletion
Underline – Proposed new language

Title 21 Subdivision Regulations

Chapter 21.24 ZERO LOT LINE SUBDIVISIONS

Sections:

21.24.010 Application and zero lot line plat of subdivision.
21.24.020 Final plat requirements.
21.24.030 Zoning requirements.
21.24.040 Party wall agreement.
21.24.050 Procedure after application.

21.24.010 Application and zero lot line plat of subdivision.

The zero lot line subdivision application, review and approval procedures shall be the same as those for minor subdivisions (Chapter 21.12) except as specified below:

A. The exact locations of the structures shall be shown along with dimensions to each adjacent property line. This may be accomplished by either of the following methods:
1. Obtain foundation permit and have foundation in place when survey is accomplished to provide plat of subdivision; or
2. Indicate proposed location of structure and surveyor field stake foundation prior to building permit.
B. No construction beyond the footings and stem wall shall be permitted and commenced until plat approval has been completed.
C. Upon the receipt of a detailed written request by the applicant, the municipality may approve an alternate zero lot line process on a case-by-case basis. In all instances, a plat must be approved by the city planning commission or assembly and shall comply with the documentation required elsewhere in this chapter.
D. The plat application shall include the proposed party wall agreement as required in Section 21.24.040.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.020 Final plat requirements.

The final plat shall comply with all other final plat requirements and shall include all required plat certificates and plat notes. In addition, the final plat shall contain the following additional certification:

LOT(S) _____ ARE INTENDED TO BE SOLD ONLY FOR ZERO LOT LINE DEVELOPMENT. LOT DEVELOPMENT SHALL REMAIN ZERO LOT LINE OR COMMON WALL CONSTRUCTION IN ITS ENTIRETY FOR THE LIFE OF THE COMMONLY BOUND UNITS. SHOULD FIRE OR OTHER DESTRUCTION OCCUR TO ONE OR BOTH OF THE UNITS, THEY SHALL BE RECONSTRUCTED ONLY AS A COMMON WALL UNIT, AGAIN, FULLY JOINED TO THEIR NEIGHBOR, UNLESS ONE SUCH PARTY TOTALLY BUYS THE INTEREST OF THE OTHER AND RECONSTITUTES THE

ORIGINAL PROPERTY BACK INTO A SINGLE LEGAL USE. THERE IS A RECORDED PARTY WALL AGREEMENT RESTRICTING THE USE OF THIS PROPERTY FOUND AT SITKA RECORDING DISTRICT UNDER SERIAL NUMBER _____.

CONSTRUCTION OF THE COMMON WALL UNITS ALONG A COMMON LOT LINE SHALL BE SIMULTANEOUS UNLESS SEPARATE CONSTRUCTION RECEIVES PRIOR APPROVAL BY THE MUNICIPALITY FOR GOOD CAUSE SHOWN.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.030 Zoning requirements.

~~Zero lot line subdivisions may be permitted in the R-1 (single and duplex residential), R-1 MH (single, duplex and single mobile home), R-1 LD (single and duplex low density), R-1 LDMH (single, duplex, and single mobile home low density), R-2 (multifamily residential), and R-2 MHP (multifamily residential including mobile homes and mobile home parks) zoning districts in accordance with the provisions of Title 22, Zoning~~.

A. Additional Requirements.

1. Zero lot line subdivisions shall permit side by side, one-family structures only (no duplex or more per side) and shall have a minimum of twenty-five percent of the total party wall adjoined together as a common wall.
2. The common wall shall consist of the following minimum rated fire wall: five-eighths-inch type "x" rated sheet rock shall be placed on the interior face of each unit, followed by a minimum of a two-inch by four-inch stud wall (sixteen-inch on center), followed by a five-eighths-inch weather-resistant, fire-rated gypsum wallboard. This is followed by a minimum of a one-inch air space, then a five-eighths-inch weather-resistant, fire-rated gypsum wallboard, then a minimum of a two-inch by four-inch stud wall (sixteen-inch center) with a five-eighths-inch type "x" rated sheet rock on the interior face of the second unit. This double-protected wall forms the common or party wall and shall be constructed so as to extend from the top of the concrete stem wall to the underside of the roof sheathing.
3. Separate water, sewer, and electrical utility services are required for each unit side. All the above services shall extend to and be individually connected to the adjacent municipal lines in the adjacent street. As separate saleable units, a zero lot line is treated as if they were totally separated buildings. No break or problem in any utility service should be allowed to have any adverse effect on the adjacent unit.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.040 Party wall agreement.

A party wall agreement shall be included as a covenant to all zero lot line subdivisions and shall be entered into by the adjacent affected property owners. This agreement shall include, but is not limited to, the following sections:

A. Recitals.
1. A legal description of the property;
2. Declarations of ownership, common wall definitions, and the purpose of the document.
B. Party Wall.
1. Declaration of the party wall as defined;
2. Provisions for the shared responsibility of major maintenance and replacement as well as the use of any common problems (i.e., party wall) of said development;
3. Statement of the duration and effect of this agreement;
4. Provisions for regulations involving encroachment onto the adjacent property.

C. Use of the Property.

1. Provisions for the major maintenance or modification of each side of the structure's exterior with the adjacent owner's agreement;
2. Declaration of the restricted use to a single-family dwelling only for each lot;
3. Restrictions for the maintenance and upkeep of each lot in a neat and orderly fashion;
4. A statement on the procedure should one or both of the units be destroyed or removed. This may include the provision of one owner purchasing the total interest of the other party and the removal and revocation of the zero lot line subdivision and party wall agreement thereby returning the total property back to a single lawful use.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.050 Procedure after application.

A. Submittal. The applicant shall submit all required information at least fifteen days prior to the date that the planning commission hearing on the subdivision is scheduled. All data shall be submitted to the planning office of the municipality.

B. Public Hearing. At a regular meeting, the planning commission shall hold a public hearing on the application request. The commission may approve, conditionally approve, or deny the application. Flagging of lot lines shall be installed as directed by the municipality. If denied, the commission shall cause to have prepared a formal letter outlining the reasons for denial.

C. Denial—Appeal. If the planning commission denies the requested subdivision, the applicant has fifteen days, from the date of the denial, to file a timely appeal. Such appeal shall be in writing, stating any reasons the applicant feels are relevant to the cause and shall be filed with the municipal clerk. A timely appeal shall stay all proceedings pending the outcome of the appeal. The assembly of the city and borough of Sitka shall hear the appeal, acting as a board of adjustment, within sixty days of receipt of the appeal. All records, applications, and other material shall be supplied to the assembly for their deliberations.

(Ord. 03-1729 § 4 (part), 2003.)

21.08.260 "Z".

A. "Zero lot line subdivision" means a technique whereby parcels may be created that might not otherwise conform to minimum size standards and which allows ~~any~~ two ~~or more~~ adjacent single-family housing units to share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line.

Title 22 Zoning Regulations

~~22.08.580 Lot, zero line. "Zero lot line" means the common property line separating two lots upon which one dwelling may be located without a setback providing a proper fire wall rating is utilized. All other aspects are the same as in conventional development. When lots are proposed for this type of development, site plan approval shall be required as part of the subdivision approval.~~

22.08.580 Lot, zero line. "Zero lot line" is a structure containing two adjacent single-family housing units that share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line. The uses allowed in Zero Lot Line, Residential are limited to residential uses, home occupations as regulated by other sections of SGC Title 22 and day cares accommodating up to four children of paying non family member clients. Also see Zero lot, residential. (Ord. 02-1683 § 4 (part), 2002.)

22.08.722 "Zero lot, residential" is a structure containing two adjacent single-family housing units that share a common side or rear lot line and shall be provided one-hour fire rated assemblies on each side of the adjoining property line. The uses allowed in Zero Lot Line, Residential are limited to residential uses, home occupations as regulated by other sections of SGC Title 22 and day cares accommodating up to four children of paying non family member clients. Also see Lot, zero line.

Insert the use Zero Lot, Residential as a permitted use in the R-1, R-1 M, R-1 LDMH, R-2, R-2 MHP, C-1, C-2 and WD districts in the table below.

Table 22.16.015-1
Residential Land Uses

Zones	P(1)	SF	SFLD	R-1	R-1 MH	R-1 LDMH	R-2	R-2 MHP	CBD (11, 12)	C-1 (11)	C-2 (11)	WD (2, 11)	I	GI (3, 10)	LI(3)	R	OS	SC (13)
RESIDENTIAL																		
• Single-family detached		P	P	P(4)	P(4)	P(4)	P(4)	P(4)		P	P	P		P	P	P	P	
• Townhouse				C(5)	C(5)	C(5)	C(5)	C(5)	C	P	P	P		C	C			
• Duplex				P	P		P	P		P	P	P		P	P			
• Residential zero lot line				P	P	P	P	P		P	P	P						
• Multiple-family				C(5)	C(5)	C(5)	P(5)	P(5)	P(5,8)	P(5)	P(5)	P(5)		C	C			
• Single manufactured home on an individual lot					P	P		P			P			C	C			
• Mobile home park								P			P	P						
GROUP RESIDENCES														C	C			
• Assisted living	C						C	C						C	C			
• Bunkhouse for transient workers							C	C				C		C				
• Dormitory	C(4)						C	C										
• Quasi-institutional	C			C	C	C	C	C						C	C			
TEMPORARY LODGING																		
• Hostel							C	C		P	P	P						

Table 22.16.015-1
Residential Land Uses

Zones	P(1)	SF	SFLD	R-1	R-1 MH	R-1 LDMH	R-2	R-2 MHP	CBD (11, 12)	C-1 (11)	C-2 (11)	WD (2, 11)	I	GI (3, 10)	LI(3)	R	OS	SC (13)
• Hotel/motel									P	P	P	P		PU/ CS	C	C		
• Bed and breakfast				C(7)	C(7)	C(7)	C(8)	C(8)	P	P	P	P		P	C			
• Short-term rental				C	C	C	C	C	P	P(9)	P(9)	P(9)		P	C	P(9)		
• Rooming house							C	C	C	P	P	P		C	C			
• Lodge										P	P	P		PU/ CS	C			
• Limited storage				C(6)	C(6)	C(6)	C(6)	C(6)						P	C			

P: Public Lands District

SF: Single-Family District

SFLD: Single-Family Low Density District

R-1: Single-Family/Duplex District

R-1 MH: Single-Family/Duplex/Manufactured Home District

R-1 LDMH: Single-Family/Duplex and Single-Family/Manufactured Home Low Density Districts

R-2: Multifamily District

R-2 MHP: Multifamily/Mobile Home District

C-1/C-2: General Commercial and General Commercial/ Mobile Home Districts

WD: Waterfront District

I: Industrial District

GI: General Island District

LI: Large Island District

R: Recreational District

OS: Open Space District

SC: Sawmill Cove Special District

CBD: Central Business District

P—Permitted

C—Conditional Use Permit Required

PU/CS—Permitted on Unsubdivided Islands and Conditional Use on Subdivided Islands

C. Residential Uses Table 22.16.015-1 Footnotes.

1. Public facilities not otherwise identified may be permitted in the public zone subject to planning commission recommendation and assembly approval subject to findings of fact that show the use is in the public interest; all reasonable safeguards are to be employed to protect the surrounding area; and that there are no reasonable alternative locations for the use.

2. All uses in the waterfront district are intended to be water-related or water-dependent except that upland uses may be non-water-related.

3. Uses listed as conditional uses in the GI and LI zones may be considered, but not necessarily approved, on a case-by-case basis.

4. Including zero lot developments.

5. Townhouse, cluster housing developments and planned unit developments are conditional uses subject to this title and Title 21 of this code, Subdivisions.

6. On-site storage of commercial fishing vessels, fishing equipment and other small business equipment is a permitted conditional use so long as such storage does not occupy more than four hundred square feet.

7. Bed and breakfast establishments are limited to three guest rooms in the R-1, R-1 MH, and R-1 LD districts as conditional uses only when no other rental such as apartments is in operation on the same lot.

8. Bed and breakfast establishments are limited to five guest rooms in the R-2, R-2 MHP districts as conditional uses only when no other rental such as apartments is in operation on the same lot.

9. Short-term rentals including legal nonconforming uses shall provide two off-street parking spaces per unit, comply with the municipal fire code, and comply with the requirements of the building department based on a life safety inspection.

10. Hotels, motels, lodges, boarding houses and bed and breakfasts capable of accommodating a maximum of six guests plus one guest for each one-half acre or fraction thereof above one acre on unsubdivided islands are permitted principal uses. Hotels, motels, lodges, boarding houses and bed and breakfasts, on unsubdivided islands that exceed this maximum, are conditional uses.

Bed and breakfast establishments, boarding houses, hotels, motels and lodges are conditional uses on subdivided islands.

11. Many of the permitted and conditional uses in the CBD, C-1, C-2, and WD zones generate traffic, noise, odor, and general impacts to a higher level and greater degree than permitted and conditional uses in residential districts. Owners of residential uses in the CBD, C-1, C-2 and WD districts must be aware of and accepting of all the permitted uses in these districts.

12. Single or multiple apartments shall only be permitted on the first floor of structures in the CBD district if approved through the conditional use process. Single and multiple apartments are permitted uses on upper floors of structures in the CBD district.

13. Any uses, except retail and business uses, and natural resource extraction and mining support facilities uses may be approved in accordance with Section 2.38.080.

Table 22.16.015-2 - Cultural/Recreational Uses

Table 22.16.015-3 – General Services Uses

Table 22.16.015-4 – Public Facilities Uses

Table 22.16-015-5 – Manufacturing/Storage Uses

Table 22.16.015-6 – Retail and Business Uses

Table 22.20-1
Development Standards(2)

	MINIMUM LOT REQUIREMENTS		MINIMUM SETBACKS			MAXIMUM HEIGHTS		MAXIMUM BUILDING COVERAGE	MAXIMUM DENSITY
ZONES	**Width**	**Area(1, 19)**	**Front(3)**	**Rear**	**Side**	**Principal Structures**	**Accessory Structures**		
P	(4)	(4)	20 ft.	15 ft.	10 ft.	40 ft.	16 ft.	35%	
SF(16)	80 ft.	8,000 s.f.	20 ft.(8)	10 ft.(9)	8 ft.	35 ft.(10)	16 ft.	35%	
SFLD	80 ft.	15,000 s.f.	20 ft.(8)	20 ft.(9)	15 ft.	35 ft.(10)	16 ft.	35%	
R-1(6, 16)	80 ft.	8,000 s.f.	20 ft.(8)	10 ft.(9)	8 ft.	35 ft.(10)	16 ft.	35%	
R-1 MH(6, 16)	80 ft.	8,000 s.f.	20 ft.(8)	10 ft.(9)	8 ft.	35 ft.(10)	16 ft.	35%	
R-1 LD/ LDMH	80 ft.	15,000 s.f.(5)	20 ft.(8)	20 ft.(9)	15 ft.	35 ft.(10)	16 ft.	35%	
R-2(6, 16)	80 ft.	8,000 s.f. for the first two units and 1,000 s.f. for each additional unit	20 ft.(8)	10 ft.(9)	8 ft.	40 ft.	16 ft.	50%	Maximum density = 24 DU/A
R-2 MHP(6)	80 ft.	Same as R-2	20 ft.(8)	10 ft.(9)	8 ft.	40 ft.	16 ft.	50%	Same as R-2
CBD(17)	None	None(7)	(11)	(11)	(11)	50 ft.	16 ft.	None	
C-1(6)	60 ft.	6,000 s.f.(7)	20 ft.(8)	10 ft.	5 ft.	40 ft.	16 ft.	None, except for setback areas	
C-2(6)	60 ft.	6,000 s.f.(7)	20 ft.(8)	10 ft.	5 ft.	40 ft.	16 ft.	Same as C-1	
WD(6)	60 ft.	6,000 s.f.(7)	20 ft.(8, 12)	5 ft.(12)	10 ft.(12)	40 ft.	16 ft.	Same as C-1	
SC	50 ft.	5,000 s.f.	10 ft.	5 ft.(12)	10 ft.(12)	50 ft.	50 ft.	Same as C-1	
I	100 ft.	15,000 s.f.	20 ft.(8)	10 ft.	5 ft.	40 ft.	16 ft.	50%(13)	
LI	None	1 acre(14)	None(15)	None(15)	None(15)	35 ft.	35 ft.	25%	
GI	None	1 acre	None(15)	None(15)	None(15)	35 ft.	35 ft.	None	

Table 22.20-1
Development Standards(2)

	MINIMUM LOT REQUIREMENTS		MINIMUM SETBACKS			MAXIMUM HEIGHTS		MAXIMUM BUILDING COVERAGE	MAXIMUM DENSITY
ZONES	**Width**	**Area(1, 19)**	**Front(3)**	**Rear**	**Side**	**Principal Structures**	**Accessory Structures**		
R	(16)	(16)	20 ft.	10 ft.	5 ft.	35 ft.	20 ft.	50%	
OS	None	1 acre	None(15)	None(15)	None(15)	35 ft.	35 ft.	None(15)	

(Ord. 11-04S § 4(B) (part), 2011; Ord. 06-06 § 4(C), 2006; Ord. 03-1746 § 4 (part), 2003; Ord. 02-1683 § 4 (part), 2002.)

22.20.035 Notes to Table 22.20-1.

1. Minimum lot area net of access easements.

2. All developed lots and parcels shall have access to a public street and circulation within the development to ensure adequate vehicular circulation for parking, freight, and emergency vehicles. Where lots or parcels do not front on and have direct access to streets, a minimum twenty-foot improved driveway with a minimum of a twelve-foot wide developed driveable surface on a legal easement shall provide access between the subject development and the street.

3. Front setbacks apply to all lot lines adjacent a public street. Corner lots have two front setbacks.

4. As determined by the specific use and its parking and loading requirements.

5. Duplexes shall have a minimum of twelve thousand square feet of lot area per unit.

6. Zero lot line lots shall be a minimum of seven thousand five hundred feet in area.
Additional Note: The minimum square footages for each unit of a zero lot line shall be as follows:
R-1 and R-1 MH 4,000 sq. ft.
R-1 LD and R-1 LDMH 7,500 sq. ft.
R-2 and R-2 MHP 4,000 sq. ft.
C-1, C-2 and WD 3,000 sq. ft.
Zero lot lines may be allowed on existing lots of record in the R-1 and R-1 MH zones with square footages less than above if the planning commission finds that there is adequate density and parking.

7. Minimum lot area per dwelling unit shall be six thousand square feet for one and two-family dwellings with an additional one thousand square feet for each additional dwelling unit.

8. Front yard setback shall be ten feet when lots abutting street rights-of-way are equal to or greater than eighty feet.

9. Residential docks are exempt from rear yard setback.

10. Except as exempted by Section 22.20.050.

11. Subject to site plan approval.

12. No setbacks are required from property lines of adjacent filled, intertidal, or submerged tidelands.

13. Additional building coverage may be permitted subject to site plan approval.

14. Unless the subject use occupies the entire island.

15. Where island lots share common property lines, the minimum setback shall be fifteen feet.

16. The minimum site setback on lots in zones SF, R-1, R-1 MH, and R-2 shall be five feet for lots that are sixty feet wide or narrower; in all other cases in those zones, the minimum side setback shall be eight feet.

17. A five-foot setback shall be along any property line abutting a public street, alley, or deed access easement. The purpose of this setback shall be to assure that sidewalks, curb and gutter, power pole locations, or other public necessities can be accommodated.

18. Lot size variances may be allowed for subdivisions that include sidewalks or pathways.

City and Borough of Sitka
Planning and Zoning Commission
Draft Minutes of Meeting
May 1, 2012

Present: Jeremy Twaddle (Chair), Darrell Windsor (Member), Richard Parmelee (Member), Wells Williams (Planning Director), Melissa Henshaw (Planner)

Members of the Public: Stephen Weatherman (Municipal Engineer), Richard Guhl, Valorie/Connor Nelson, Shannon Haugland (Daily Sitka Sentinel)

Chairman Twaddle called the meeting to order at 7:00 p.m.

Consideration of the Minutes from the April 17, 2012 meeting:

MOTION: M/S PARMELEE/WINDSOR moved to approve the meeting minutes for April 17, 2012.

ACTION: Motion **PASSED unanimously** on a voice vote.

This evening's business:

CODE TEXT AMENDMENTS
ZERO LOT LINES
SITKA PLANNING OFFICE

Public hearing and consideration of zoning and subdivision text amendments to zero lot lines including sections 21.08.260; 21.24.010; 21.24.020; 21.24.030; 21.24.040; 21.24.050; 22.08.580; 22.08.722 New; and Table 22.16.015-1. Full description details are available at the Sitka Planning Office and are available online at www.cityofsitka.com.

Planning Director Williams stated that he initiated this request to accommodate concerns that the Nelson's raised with the Menendez day care. He reviewed the changes with the Commission which included the inconsistence with the zoning code and the subdivision code, the reworded term to residential zero lot line, and definitions.

Chair Twaddle received confirmation from Planning Director Williams that a conditional use permit under this new code does not allow a day care of more than four children that are non family members.

PUBLIC COMMENT: Connor Nelson came forward hoping that this request wouldn't be rushed. He stated that he doesn't think that home occupations should be allowed. He is concerned with the language and doesn't think that we go back and retroact uses. The party wall agreements state residential use only. He isn't sure if people that have zero lot lines knows what is going on. Zero lot lines in his mind were always a trade off since the square footage is less. Since it is less then owners should get a residential unit only not a bed and breakfast or other uses.

Valorie Nelson came forward. She attended the January 17th meeting in which the party wall agreement was to be evaluated by the Municipal Attorney. In scope and jurisdiction 21.04.030 under C 21.24 a subdivision creating lots for residential units within common walls or for building residences on the side lot lines. Residences are just that; residences and not businesses. She doesn't think the Commission had enough time to explore nor did the attorney give favorable approval. The parking plan submitted was different than what the Commission requested. Home occupancy is a non residential use.

Planning Director Williams suggested this go to the first meeting in June also noting that Home Occupations should be looked at in this request.

Chair Twaddle confirmed with Planning Director Williams that it was determined by the Municipal Attorney that the party wall agreement is a private contract and not part of a conditional use permit. Discussion occurred in regards to home occupations, accessory use tables and affordable housing with too many rules and regulations.

PLANNING DIRECTOR'S REPORT: None

PUBLIC BUSINESS FROM THE FLOOR: Connor Nelson came forward with a question without a clear solution in regards to the dedications of right-of-ways and easement on a plat to which Planning Director Williams stated that it wasn't clear in the past whether it was private or public use.

ADJOURNMENT

MOTION: M/S PARMELEE/WINDSOR moved to adjourn at 8:59 p.m.

ACTION: Motion **PASSED unanimously** on a voice vote.

Jeremy Twaddle, Chair

Melissa Henshaw, Secretary

CITY AND BOROUGH OF SITKA
Planning Commission
Minutes of Meeting
June 19, 2012

Present: Jeremy Twaddle (Chair), Tom Rogers (Member), Darrell Windsor (Member), Wells Williams (Planning Director), Gail Johansen Peterson (Contract Secretary).

Members of the Public: Francois Bakkes, Chad Remington, Connor & Valerie Nelson, Shannon Haugland (Daily Sitka Sentinel).

Chairperson Twaddle called the meeting to order at 7:00 p.m.

Consideration of the Minutes from the June 5, 2012 meeting:

MOTION: M/S Windsor/Rogers to approve the meeting minutes for June 5, 2012.

ACTION: Motion **PASSED unanimously** on a voice vote.

The evening business:

CODE TEXT AMENDMENTS
ZERO LOT LINES
SITKA PLANNING OFFICE

Public hearing and consideration of zoning and subdivision text amendments to zero lot lines including sections 21.08.260; 21.24.010; 21.24.020; 21.24.030; 21.24.040; 21.24.050; 22.08.580; 22.08.722 New; and Table 22.16.015-1. Full description and details are available at the Sitka Planning Office and are available online at www.cityofsitka.com.

Planning Director Williams reviewed proposed zoning and subdivision text amendments zero lot lines. The intent is to provide a regulatory definition of zero lot lines, add use of zero lot lines to residential use and add zero lot lines to the residential use table. Staff hopes the proposed amendments will accommodate concerns that have been raised.

PUBLIC COMMENT: Valerie Nelson spoke to the proposed amendments and said she and her husband do not want to be accommodated. They simply request the City follow its own ordinances. Zero lot lines required a party wall agreement. She viewed the proposed amendments as an attempt to invalidate the law suit she and her husband filed two months ago and to retroactively approve non-residential uses. Ms. Nelson read aloud text about home occupations as an example. The amendments would remove protections to residential properties and invalidate party wall agreements that align with regulations prohibiting non-residential uses. This devalues residential property affected by the revisions. Ms. Nelson stated every property owner with a zero lot line should be given fair notice about the proposed changes. She noted zero lot lines were created in the mid-1980's to address needs for affordable housing.

Connor Nelson stated he and his wife never asked to be appeased. They came before the Planning Commission and City Assembly to point out under Title 21 the zoning text was single family residential only. Party wall agreements all followed this Title. He stated it is confusing because now retroactive uses are being added. This will be taking from anyone under the

impression they are living under Title 21 uses for single family dwelling only. He asserted the recent granting of a conditional use permit for a home occupation was incorrect. Mr. Nelson stated they filed an appeal because they felt this was wrong. The parking plan was also incorrect and is not even being followed. The Planning Commission and Assembly did virtually nothing to protect the neighbors. Mr. Nelson will see this matter through the court process so that fresh eyes can look at the matter to provide a ruling all parties will abide, whatever the outcome.

Mr. Nelson also mentioned it is not clear how to revise the present code under zero lot lines to permit working in one's occupation in one's home. However, he would not object to this if there was a way to revise this section. He also does not see a problem with three zero lot lines side-by-side. He noted this would be useful in some circumstances and described a beach lot he owns that this could apply to in order to provide affordable housing.

A matter not addressed here are private properties on private road ways. These are the result of minor subdivisions and he would like revisions to the code to make it possible to have zero lot lines. This would make it more affordable to make the best use of the lots. Section 21.08.260 allows two or more zero lot lines. Chair Twaddle stated he believes this applies to town homes.

Planning Director Williams noted the zoning code and subdivision code are internally inconsistent regarding zero lot lines. He provided examples and stated the revisions are proposed to align the codes. No changes are proposed for party wall agreements.

Commissioner questions were answered. A list of allowable home occupations will be provided. This matter will be brought back to the Commission at the July 17, 2012 meeting.

PLANNING DIRECTOR'S REPORT: The July 3 meeting is cancelled. In early August Mr. Williams will be in Montana. Staff will give presentations on GIS. Assembly will consider a vacated right of way.

PUBLIC BUSINESS FROM THE FLOOR: None.

COMMISSIONER COMMENTS: A property at Price and Burkhart Streets received complaints.

ADJOURNMENT

MOTION: M/S Rogers/Windsor to adjourn at 7:58pm.

ACTION: Motion **PASSED unanimously** on a voice vote.

Jeremy Twaddle, Chair

Gail Johansen Peterson, Contract Secretary

CITY AND BOROUGH OF SITKA
Planning Commission
Minutes of Meeting
July 17, 2012

Present: Tom Rogers (Acting Chair), Darrell Windsor (Member), Richard Parmelee (Member), Wells Williams (Planning Director), Melissa Henshaw (Planner I)

Members of the Public: Colleen Ingman, Grace Hwang, Craig Giammona (Daily Sitka Sentinel).

Acting Chair Rogers called the meeting to order at 7:00 p.m.

Consideration of the Minutes from the June 19, 2012 meeting:

MOTION: M/S PARMELEE/WINDSOR to approve the meeting minutes for June 19, 2012.

ACTION: Motion **PASSED unanimously** on a voice vote.

The evening business:

CODE TEXT AMENDMENTS
ZERO LOT LINES
SITKA PLANNING OFFICE

Public hearing and consideration of zoning and subdivision text amendments to zero lot lines including sections 21.08.260; 21.24.010; 21.24.020; 21.24.030; 21.24.040; 21.24.050; 22.08.580; 22.08.722 New; and Table 22.16.015-1. Full description and details are available at the Sitka Planning Office and are available online at www.cityofsitka.com.

Planning Director Williams informed commissioners that this is unchanged. This clarifies and cleans up some contradictions in the code. These changes do three things: It strikes the zoning requirements in 21.24.030; it creates a regulatory definition in title 22; and lastly it is carried over into the use tables.

Commissioner Windsor received clarification of "up to four children paying non family member clients."

PUBLIC COMMENT: None.

MOTION: M/S PARMELEE/WINDSOR moved to recommend to the Assembly the zoning and subdivision text amendments to zero lot lines be enacted by the Assembly by Ordinance.

MOTION: M/S WINDSOR/PARMELEE moved to approve the following finding in support of the recommended approval of the zoning and subdivision text amendments:

1. Consistent with Comprehensive Plan policy 2.3.1 which states To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural

lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners.

ACTION: Motion **PASSED unanimously** on a voice vote.

PLANNING DIRECTOR'S REPORT: The next meeting is three weeks from tonight. There is one item on the agenda for the narrowing of an access easement on the old SJ campus. However, the agenda is closed earlier due to the Planner I being out of town. Commissioner Rogers will be out of town.

PUBLIC BUSINESS FROM THE FLOOR: None.

ADJOURNMENT

MOTION: M/S WINDSOR/PARMELEE to adjourn at 7:46 pm.

ACTION: Motion **PASSED unanimously** on a voice vote.

Tom Rogers, Acting Chair

Melissa Henshaw, Secretary

Subdivision and Zoning Code Revisions to the Zero Lot Line Regulations
July 17, 2012

Again, Tuesday night is the zoning and subdivision text amendments to zero lot lines. Directly following is the permitted accessory uses and the home occupation regulations as promised for the Commission at the June 19th meeting.

Subdivision and Zoning Code Revisions to the Zero Lot Line Regulations
June 19, 2012

Back before the Board and up for consideration Tuesday night is the zoning and subdivision text amendments to zero lot lines.

Subdivision and Zoning Code Revisions to the Zero Lot Line Regulations
May 1st, 2012

Tuesday night, the board will hold a public hearing on a proposal by the Planning Office to clean up the zero lot line regulations in the zoning and subdivision regulations.

The proposals are an attempt to insure that zero lot lines, in commercial zones, do not contain the full range of commercial uses. The proposal was developed in response to issues raised by Connor and Valorie Nelson during their request for reconsideration of the Menendez day care conditional use request. They were also drafted after the Assembly expressed concerns about the current zero lot line regulations.

Currently, the subdivision regulations contain a paragraph that states that zero lots are allowed in residential zones. The paragraph is in SGC 21.24.030. While the zoning regulations do not list zero lot lines in the Residential Land Use table, they do list minimum requirements for zero lot lines in the Development Standards table. The subdivision and zoning regulations are, therefore, internally inconsistent.

The Planning Office proposal remedies the situation by 1) striking the zoning language from the subdivision regulations, 2) creating a regulatory definition for residential zero lot lines in the zoning code, and, 3) adding the use "residential zero lot line" in the Residential Land Use table. The residential zero lot line definition limits the types of activities that can occur in the zero lot lines in all zones. The potential for conflict between the subdivision and zoning regulations is reduced. The zoning code also makes it clear that zero lot lines are intended to be residential in nature.

The Planning Office intends to merge these changes into the zoning and subdivision code revision ordinance when that ordinance reaches the Assembly later this year. The Planning Office will forward those changes onto the Assembly after they finish hearing the current land use appeals, finish with the budget, and staff's busy summer travel schedule is over.

It is the finding of the Planning Office that these proposals further the public process by providing clarity to uses in the zero lot lines. The Public Works Department has submitted minor changes to party wall agreement language that merits Planning Commission review. These revisions do not alter the intent of the parties. The proposals are consistent the policy 2.3.1 of the 2007 Comprehensive Plan that encourages the orderly use of private land. The Planning Office recommends that the Planning Commission pass a motion recommending approval of the proposal.

ɜINAL PROPERTY BACK INTO A SINGLE LEGAL USE. THERE IS A RECORDED PARTY WALL ɟREEMENT RESTRICTING THE USE OF THIS PROPERTY FOUND AT SITKA RECORDING ɟISTRICT UNDER SERIAL NUMBER _____.

CONSTRUCTION OF THE COMMON WALL UNITS ALONG A COMMON LOT LINE SHALL BE SIMULTANEOUS UNLESS SEPARATE CONSTRUCTION RECEIVES PRIOR APPROVAL BY THE MUNICIPALITY FOR GOOD CAUSE SHOWN.

(Ord. 03-1729 § 4 (part), 2003.)

Public Works Comments

21.24.030 Zoning requirements.

Zero lot line subdivisions may be permitted in the R-1 (single and duplex residential), R-1 MH (single, duplex and single mobile home), R-1 LD (single and duplex low density), R-1 LDMH (single, duplex, and single mobile home low density), R-2 (multifamily residential), and R-2 MHP (multifamily residential including mobile homes and mobile home parks) zoning districts in accordance with the provisions of Title 22, Zoning.

A. Additional Requirements.

the First over

1. Zero lot line subdivisions shall permit side by side, one-family structures only (no duplex or more per side) and shall have a minimum of twenty-five percent of the total party wall adjoined together as a common wall.
2. The common wall shall consist of the following minimum rated fire wall: five-eighths-inch type "x" rated sheet rock shall be placed on the interior face of ~~each~~ unit, ~~followed by a~~ minimum of a two-inch by four-inch stud wall (sixteen-inch on center), followed by a five-eighths-inch weather-resistant, fire-rated gypsum wallboard. This is followed by a minimum of a one-inch air space, then a five-eighths-inch weather-resistant, fire-rated gypsum wallboard, then a minimum of a two-inch by four-inch stud wall (sixteen-inch center) with a five-eighths-inch type "x" rated sheet rock on the interior face of the second unit. This double-protected wall forms the common or party wall and shall be constructed so as to extend from the top of the concrete stem wall to the underside of the roof sheathing.
3. Separate water, sewer, and electrical utility services are required for each unit side. All the above services shall extend to and be individually connected to the adjacent municipal lines in the adjacent street. As separate saleable units, a zero lot line is treated as if they were totally separated buildings. No break or problem in any utility service should be allowed to have any adverse effect on the adjacent unit.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.040 Party wall agreement.

A party wall agreement shall be included as a covenant to all zero lot line subdivisions and shall be entered into by the adjacent affected property owners. This agreement shall include, but is not limited to, the following sections:

A. Recitals.
1. A legal description of the property;
2. Declarations of ownership, common wall definitions, and the purpose of the document.
B. Party Wall.
1. Declaration of the party wall as defined;
2. Provisions for the shared responsibility of major maintenance and replacement as well as the use of any common problems (i.e., party wall) of said development;
3. Statement of the duration and effect of this agreement;
4. Provisions for regulations involving encroachment onto the adjacent property.

ZC12-03

CITY AND BOROUGH OF SITKA
PLANNING DEPARTMENT
ZONE CHANGE APPLICATION

ZONE MAP AMENDMENT FEE	$100.00
ZONE TEXT AMENDMENT FEE	$100.00
Plus current city sales tax	

ZONING AND SUBDIVISION TEXT AMENDMENT REQUEST

Applicant's Name: CITY & BOROUGH OF SITKA - PLANNING OFFICE

Phone Number: 747-1814

Mailing Address: 100 LINCOLN STREET, SITKA, AK

Applicant's Signature: _____ Date Submitted 4/17/12

Provide information or data, as necessary, to fully outline the reasons and justifications for the request. *Attach additional sheets as necessary.*

For *official map amendments*, the application shall contain:
1. A legal description of ***each*** subject property along with the owner's name, address, and contact person for ***each*** subject property;
2. An analysis showing the public benefit of the proposed amendment;
3. An analysis showing the proposal's consistency with the Comprehensive Plan;
4. A map of the area to be rezoned.

LIST SPECIFIC REQUEST: REVISE ZONING + SUBDIVISION REGULATIONS PERTAINING TO ZERO LOT LINES IN COMMERCIAL RESIDENTIAL ZONES. DETAILS ATTACHED.

EXPLANATION OF REQUEST:

PROMOTE CLARITY + REMOVE INTERNALLY INCONSISTENT SECTIONS

After the application and supporting materials has been determined to be complete by the Planning Office, the request will be placed on the next available Planning Comission agenda.

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	ORD 12-29	**Version:**	1	**Name:**	
Type:	Ordinance			**Status:**	POSTPONED
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	10/9/2012			**Final action:**	
Title:	Amending various SGC Sections to authorize an advisory vote rather than a mandatory vote on sale, lease, or destruction of municipal assets				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	ORD 12-29 DOCS				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	POSTPONED	Pass

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Sponsors: Michael Reif and
Bill Paden

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-29

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING VARIOUS SITKA GENERAL CODE SECTIONS TO AUTHORIZE AN ADVISORY VOTE RATHER THAN A MANDATORY VOTE ON SALE, LEASE, OR DESTRUCTION OF MUNICIPAL ASSETS

1. **CLASSIFICATION.** This Ordinance is of a permanent nature and is intended to become part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this Ordinance or any application to any person or circumstance is held invalid, the remainder of this Ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** The purpose of this ordinance is to amend various SGC sections to allow for an advisory vote rather than a mandatory vote for sale or lease of municipal property above a certain value (e.g. $500,000 for sale; $750,000 for leases), size (e.g. tidelands of more than 250 frontage feet, such as the upcoming NSRRA tidelands lease extension), or if municipal property is sold or leased for cruise boat dock or transfer facility. It also would make any vote permissive and only advisory for destruction of municipal building above $100,000.

The Assembly respects and fully supports the rights of citizens to participate in their government, including by initiative/referendum. The Assembly is also responsible for abiding by the Alaska Constitution. The Alaska Constitution limits initiatives, including any approval or disapproval of appropriations of assets. These SGC amendments makes these SGC sections consistent with the Alaska Supreme Court decision in *Alliance of Concerned Taxpayers Inc. v. Kenai Peninsula Borough ("ACT"),* 273 P.3d 1128 (Alaska 2012). According to this recent decision, the Assembly, rather than the public, holds the authority to approve or disapprove appropriation of public assets, including such assets as municipal land and its disposal (by sale, lease or destruction). The *ACT* decision found an initiative unconstitutional that would have enacted a municipal code section that required any construction project over one million dollars to be approved by a public vote. This decision is applicable here, even though not all of the code sections being amended were created by an initiative, for some were passed by an Assembly ordinance in response to initiative efforts. The underlying ruling in *ACT* makes it clear that a long series of Alaska Supreme Court decisions about state legislature authority applies to municipal legislatures. These Court decisions extend to municipal appropriations of municipal assets, finding that "the legislature [assembly], and *only* the legislature [assembly] retains control over the allocation of state [municipal] assets among competing needs." *ACT,* 273 P.3d at 1137.

Additionally, this ordinance allows for greater flexibility in addressing affordable housing challenges in Sitka. It would expedite making municipal property available and

approving municipal property sales and leases, such as for the bench lands and old city shop properties. These municipal property transactions would not be stalled waiting for a municipal election, that could also require expending municipal monies for a special election.

Further, this ordinance addresses a conflict between Sitka Charter and SGC as pointed out in *Sitkans for Responsible Government et al. v. CBS et al.,* 274 P.3d 486, 493 (Alaska 2012). Sitka Charter requires any proposed referendum, such as regarding land disposals (i.e. leases, sales, transfers), to be supported by a certain number of elector signatures before putting the ballot referendum to the voters. This ordinance resolves the conflict in current SGC provisions with the Charter by striking the automatic mandatory vote requirement.

The public will still participate in Assembly decisions on land and property disposals. This ordinance allows for the Assembly to authorize an advisory vote involving certain municipal property sales, leases, and/or disposal. Additionally, even if the Assembly decides not to hold an advisory vote, these municipal property transactions (i.e. sales, leases, building destruction) would involve public hearings because they must be approved by ordinance (non-Sawmill Cove Industrial Park property) or resolution (Sawmill Cove Industrial Park property). Therefore, the public will continue to be advised and involved in these types of municipal property decisions. This ordinance allows to the full extent possible under the law for direct involvement of citizens in local government decision, while recognizing the fact that local governments operate as representative rather than direct law making form of government. These SGC amendments will expedite the process for addressing land and property disposals, including for affordable housing, leasing and sale of property, and disposing of dilapidated municipal buildings and structures. Most importantly, these SGC amendments will result in the SGC and the Sitka Charter to be consistent with each other and with comparable provisions in state law and Alaska Constitution.

The following sections to be amended are:

- SGC 2.38.080 General powers;
- SGC 18.12.010B Real property disposal;
- SGC 18.12.014A Requirement for a public vote and disclosure of information for land disposals related to a dock or vessel transfer facility that could be used by large cruise ships;
- SGC 18.16.030 Government leases and permits;
- SGC 18.16.170 Class III – Ratification by voters;
- SGC 18.16.200 Class III – Lease by ordinance;
- SGC 18.16.220 Class III – Direct lease by municipality; and
- SGC 19.07.040 Authorization by ordinance or election.

4. **<u>ENACTMENT.</u>** **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that the following SGC sections are amended to read as follows: SGC 2.38.080; SGC 18.12.010B; SGC 18.12.014A; SGC 18.16.030; SGC 18.16.170; SGC 18.16.200; SGC 18.16.220 and SGC 19.07.040 (new language underlined; deleted language stricken):

Chapter 2.38
SAWMILL COVE INDUSTRIAL SITE

* * *

2.38.080 General powers.

A. Subject to state laws and municipal ordinances, the board of directors shall generally exercise all powers necessary and incidental to operation of all Sawmill Cove industrial park facilities in the public interest and in a sound business manner. In particular, and without limitation on the foregoing, the board:

* * *

7. Shall administer and dispose of tideland, submerged land, and other land identified by the assembly by ordinance as subject to Sawmill Cove industrial park administration, subject to the following limitations:

* * *

c. The Assembly may authorize an advisory vote when applicable under other sections of the Sitka General Code.

* * *

18.12.010 Real property disposal.

* * *

B. Upon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the Assembly may authorize an advisory vote. ~~the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election. This subsection shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539.~~

* * *

F. When it is deemed advantageous to the municipality, it may trade uplands or tidelands for other land of approximately equal size or value. Should the municipal property in question be of such size or value or to such a class of grantee as to require an advisory vote, it may be authorized by the Assembly when applicable under other sections of the Sitka General Code. ~~election before conveyance of title can be made, the requirements and procedures concerning such election shall apply.~~

* * *

18.12.014 Advisory ~~Requirement for a public~~ vote and disclosure of information for land disposals related to a dock or vessel transfer facility that could be used by large cruise ships.

~~A.~~ The Assembly may authorize an advisory vote for ~~Notwithstanding Sections 2.38.080(A)(7) and 2.38.090 or any other provision of law, any ordinance authorizing~~ the sale, lease or disposal of any real property of the city and borough for a dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length. ~~shall be effective only after an affirmative vote of the electorate. Not less than thirty days prior to the election, the city and borough shall make available to the electorate the terms of~~

~~the proposed sale, lease or disposal of real property and a summary of the direct anticipated costs to the city and borough.~~

~~B. This section applies to tidelands and other real property owned by the city and borough, including any real property in Sawmill Cove.~~

* * *

Chapter 18.16
TIDELAND LEASE PROCEDURE

* * *

18.16.030 Government leases and permits.
When leases or permits are issued to other local, state, or federal governmental units or a corporation or agency through which the governmental unit acts, there is no limit to the front footage obtainable, or valuation limit and no advisory ~~requirement of an~~ election as set out by Sections 18.12.010 and Chapter 18.16~~.110~~, and no consideration for such a lease shall necessarily be required.

18.16.170 Class III – Ratification by voters.
The Assembly may authorize an advisory vote for l~~L~~ease of tidelands to other than preference right holders for areas which have more than two hundred fifty feet of frontage along the upland meander line, or lease of any tidelands valued above seven hundred fifty thousand dollars.~~, shall be submitted to the voters for election ratification. This section shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539.~~

* * *

18.16.200 Class III – Lease by ordinance.
Should the auction be held and a bid accepted by the assembly, the lease shall be executed subject to passage of an ordinance authorizing the lease. The Assembly may authorize an advisory vote whenever applicable by other sections of the Sitka General Code. ~~If the lease is subject to ratification by the voters, the authorizing ordinance should also authorize putting the question to the voters at the next regular or special municipal election.~~

* * *

18.16.220 Class III – Direct lease by municipality.
By ordinance the municipality may elect to lease tidelands upon its own initiative upon such terms as are set out in the ordinance.

Tidelands leased by the direct lease procedure may ~~shall~~ be subject to an advisory vote if approved by the Assembly ~~ratification election~~ when~~ever~~ applicable by other sections of the Sitka General Code.

* * *

Chapter 19.07
DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED BUILDINGS

* * *

19.07.040 Authorization by ordinance or election.
If the value of the building exceeds twenty-five thousand dollars, its removal or demolition shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the Assembly may authorize an advisory vote. ~~the removal must be approved by the voters at a general or special election.~~

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 25th day of September, 2012.

Cheryl Westover, Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 97-1446

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA ADOPTING THE MOST RECENT VERSIONS OF THE VARIOUS BUILDING AND CONSTRUCTION CODES BY REFERENCE.

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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

3. **PURPOSE.** This ordinance is being adopted to update the various building and construction codes.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 19 of the Sitka General Code is hereby repealed and re-enacted to read as follows:

Title 19
BUILDINGS AND CONSTRUCTION

Chapters:

19.01 Building Code
19.02 Electrical Code
19.03 Plumbing Code
19.04 Mechanical Code
19.05 Fire Code
19.06 Uniform Code for Abatement of Dangerous Buildings
19.07 Demolition or Removal of Municipally Owned Buildings
19.08 Code Applicability

19.06.040 ..... Section 302 amended - Dangerous Building
The first sentence is amended to read as follows:

> For the purpose of this code, any building, structure, or site which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered, *or there exists a public nuisance as defined in section 18.04.010 J. of the Sitka General Code.*

Chapter 19.07
DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED BUILDINGS
(Ord. 77-299)

Sections:

19.07.010 ..... Assembly authority.
19.07.020 ..... Bidding.
19.07.030 ..... Buildings considered personal property.
19.07.040 ..... Authorization by ordinance or election.
19.07.050 ..... Value determination.
19.07.060 ..... Scope.

19.07.010 ..... Assembly authority.
The assembly may by resolution or ordinance provide for the demolition or removal of municipally owned buildings. The assembly may use its discretion in deciding to demolish or remove any building. It may consider such facts and hire such experts as it may see fit.

19.07.020 ..... Bidding.
Demolition or removal shall be by competitive bidding, or the assembly may authorize the administrator to have the building demolished or removed by municipal employees.

19.07.030 ..... Buildings considered personal property.
For all purposes, any building being considered for demolition or removal from its site shall be considered to be personal property and not real property.

19.07.040 ..... Authorization by ordinance or election.
If the value of the building exceeds twenty-five thousand dollars, its removal or demolition shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the removal must be approved by the voters at a general or special election.

19.07.050 ..... Value determination.
Value shall be determined as the amount by which the salvage value of the building, after removal,

or the materials in it, after removal, exceed the estimated cost of removal or demolition.

19.07.060 ..... Scope.
This chapter and the procedures contained herein shall take precedence to and prevail over any other ordinances of the municipality passed prior to the ordinance codified in this chapter.

Chapter 19.08
Code Applicability
(Ord. 97-1406)

Sections:
19.08.010 ..... Geographical
19.08.020 ..... Sitka Road System

19.080010 ..... Geographical limits.
Except for The Uniform Code for the Abatement of Dangerous Buildings (which shall apply throughout the entire borough), these codes are adopted as construction standards for the areas of the municipality served by the Sitka road system only.

19.18.020. ..... Sitka Road System.
The Sitka Road System shall be considered to include Halibut Point Road, Saw Mill Creek Road, Harbor Drive, and all of their connecting roads, collectors, access roadways, and easements.

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5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 22nd day of July, 1997.

Peter S. Hallgren, Mayor

ATTEST:

Kathy Hope Erickson, Municipal Clerk

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2004-64

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 19, BUILDING AND CONSTRUCTION, OF THE SITKA GENERAL CODE TO ADOPT THE MOST RECENT VERSIONS OF VARIOUS BUILDING AND LIFE-SAFETY CODES

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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

3. **PURPOSE.** This ordinance adopts the most recent versions of various building and life-safety codes.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 19, Building and Construction, of the Sitka General Code is hereby amended to read as follows:

Title 19

BUILDING AND CONSTRUCTION

Chapters:

19.01 Building Code
19.02 Electrical Code
19.03 Plumbing Code
19.04 Mechanical Code
19.05 Fire Code
19.06 Uniform Code for Abatement of Dangerous Buildings
19.07 Demolition or Removal of Municipally Owned Buildings
19.08 Code Applicability
19.09 Electrical Code for Islands
19.10 Plumbing Code for Islands
19.11 Mechanical Code for Islands
19.12 Fire Code for Islands
19.14 Building Code for Islands
19.20 Fire Marshal Deferral Standards

19.06.030 Section 205 amended—Board of appeals.

Sentences two and three are deleted.

19.06.040 Section 302 amended—Dangerous building.

The first sentence is amended to read as follows:

> For the purpose of this code, any building, structure, or site which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered, or there exists a public nuisance as defined in section 18.04.010 J. of the Sitka General Code.

Chapter 19.07

DEMOLITION OR REMOVAL OF MUNICIPALLY OWNED BUILDINGS

Sections:

19.07.010 Assembly authority.
19.07.020 Bidding.
19.07.030 Buildings considered personal property.
19.07.040 Authorization by ordinance or election.
19.07.050 Value determination.
19.07.060 Scope.

19.07.010 Assembly authority.

The assembly may by resolution or ordinance provide for the demolition or removal of municipally owned buildings. The assembly may use its discretion in deciding to demolish or remove any building. It may consider such facts and hire such experts as it may see fit.

19.07.020 Bidding.

Demolition or removal shall be by competitive bidding, or the assembly may authorize the administrator to have the building demolished or removed by municipal employees.

19.07.030 Buildings considered personal property.

For all purposes, any building being considered for demolition or removal from its site shall be considered to be personal property and not real property.

19.07.040 Authorization by ordinance or election.

If the value of the building exceeds twenty-five thousand dollars, its removal or demolition shall be authorized by ordinance. If the value is more than one hundred thousand dollars, the removal must be approved by the voters at a general or special election.

19.07.050 Value determination.

Value shall be determined as the amount by which the salvage value of the building, after removal, or the materials in it, after removal, exceed the estimated cost of removal or demolition.

19.07.060 Scope.

This chapter and the procedures contained herein shall take precedence to and prevail over any other ordinances of the municipality passed prior to the ordinance codified in this chapter.

Chapter 19.08

CODE APPLICABILITY

Sections:

19.08.010 Geographical limits.
19.08.020 Sitka road system.
19.08.025 Docks and floating buildings.
19.08.030 Islands.
19.08.040 Definition of "Islands" for purposes of this Title and Title 22.

19.08.010 Geographical limits.

Except for the Uniform Code for the Abatement of Dangerous Buildings (which shall apply throughout the entire municipality), the provisions of Title 19 apply as construction standards for the areas of the municipality served by the Sitka road system only, except as modified by SGC 19.09 through 19.14 (Island codes).

19.08.020 Sitka road system.

The Sitka road system shall be considered to include Halibut Point Road, Saw Mill Creek Road, Harbor Drive, and all of their connecting roads, collectors, access roadways and easements.

Sponsor: Administrator

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 99-1539

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AUTHORIZING THE LEASING OF 17.8 ACRES, INCLUDING APPROXIMATELY 100,000 SQUARE FEET OF EXISTING BUILDINGS, AT THE FORMER ALASKA PULP CORPORATION MILL SITE AND THE SALE OF UP TO 400 MILLION GALLONS OF BLUE LAKE WATER A YEAR FOR BOTTLING, TO SAWMILL CREEK DEVELOPMENT COMPANY L.L.C.

1. CLASSIFICATION. This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.

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

3. PURPOSE. In April 1999, the municipality accepted title to the former Alaska Pulp Corporation mill site in order to place the property back into use and stimulate Sitka's economy. It was the hope and belief of the Assembly that taking title to the property would accelerate the process of reactivating the property and ensure the redevelopment was consistent with the community's vision of the future. Sawmill Creek Development Company proposes to construct a water bottling plant which would provide a clean industry and local employment.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka as follows:

A. A long-term lease of 17.8 acres including approximately 100,000 square feet of existing buildings, at the former Alaska Pulp Corporation mill site, on terms negotiated by staff and approved by the Assembly, to Sawmill Creek Development Company is hereby authorized.

B. The Assembly finds that the provision, in Sitka General Code 18.12.010 B., requiring that ordinances authorizing leases of real property of a value more than seven hundred fifty thousand dollars be submitted to the electorate for ratification is not appropriately applied to the mill site property, which was acquired to be disposed of for industrial uses and is necessarily conveyed in large high-value parcels. Therefore the Assembly ordains that the lease authorization in 4A of this ordinance need not be submitted to the voters for ratification. This is an ordinance-created exception to the provisions of 18.12.010B.

C. The sale of up to 400 million gallons of water per year to Sawmill Creek Development Company L.L.C. under terms to be negotiated by staff and

approved by the Assembly is hereby authorized.

D. Under Section 11.14(b) of the Sitka Home Rule Charter, and Sitka General Code section 18.12.010 E, the Assembly finds that competitive bidding is not appropriate for the lease authorized under 4A and the water sale under 4C because the nature of the transactions and the surrounding circumstances:
   1. The proposed leasehold is not normal governmental property or state grant property. It is industrial acreage and buildings, which are difficult to delineate for bid without knowledge of the use and identified user.
   2. The desire of the municipality is to attract clean industry and family wage jobs. Sawmill Creek Development Company fits both of those criteria and is the only possible tenant who has approached Sitka with a proposal of this nature and scale.
   3. Sitka has a need to put at least a portion of the site into use quickly, and Sawmill Creek Development Company has the ability and desire to move forward.
   4. Sawmill Creek Development Company's funding must be committed in the near future.
   5. A negotiated lease is appropriate because of the nature of the property and the circumstances surrounding the proposal.
   6. The water sale is an integral use of the property and the negotiations for the lease.

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 27th day of July, 1999.

Stan J. Filler, Mayor

ATTEST:

Kathy Hope Erickson
Municipal Clerk

Sponsor: Christianson, Pearson

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 99-1545

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING SUBSECTIONS 18.12.010 B. AND 18.16.120 OF THE SITKA GENERAL CODE TO PROVIDE THAT THE ELECTION REQUIREMENTS IN THOSE SUBSECTIONS DO NOT APPLY TO THE MILL SITE PROPERTY ACQUIRED FROM ALASKA PULP CORPORATION

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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

3. PURPOSE. In April 1999, the municipality accepted the conveyance of the Alaska Pulp Corporation (APC) mill site property with the intention of developing it as an industrial park to benefit Sitka's economy.

Since the property was acquired for disposal in the interest of economic development, there is no reason to have a vote to determine whether to lease all or part of the property. In leasing industrial parcels, it will be necessary to act in an expeditious, business-like manner. The APC mill site can only be used for industrial purposes and holding an election to authorize the decision to lease a parcel is inappropriate.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that subsections 18.12.010 B. and 18.16.120 of the Sitka General Code are amended to add the following:

> This subsection shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539.

5. EFFECTIVE DATE. This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 24th day of August, 1999.

Stan J. Filler, Mayor

ATTEST:

Kathy Hope Erickson, Municipal Clerk

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 00-1568

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING TITLE 2 OF THE SITKA GENERAL CODE ADDING CHAPTER 2.38, ESTABLISHING RULES AND PROCEDURES GOVERNING LEASES AND PROPERTY MANAGEMENT AT THE FORMER ALASKA PULP CORPORATION MILL SITE

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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

3. PURPOSE. Unlike other property owned by the municipality, the former Alaska Pulp Corporation mill site was acquired not for governmental purposes from the state or federal government, but for economic development and disposal. In general, the property will not be used for public improvements. It will be leased or sold to individuals and corporations to develop business opportunities and provide jobs. For that reason, it is important to enact a procedure for property management and disposal at the site which more closely corresponds to private sector disposals.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Title 2 of the Sitka General Code is amended to add Chapter 2.38, which shall read as follows:

A. Chapter 2.38 Sawmill Cove Industrial Site

2.38.010	Designation
2.38.020	Sawmill Cove Industrial Park Board of Directors
2.38.030	Board of Directors organization
2.38.040	Vacancies
2.38.050	Meetings
2.38.060	Coordination
2.38.070	Membership in associations
2.38.080	General powers
2.38.090	Leasing powers
2.38.100	Adoption of regulations
2.38.110	Sawmill Cove Industrial Park Director designated appointment
2.38.120	Director duties and responsibilities
2.38.130	Schedule of fees and charges
2.38.140	Industrial Park fees
2.38.150	Preparation and submission of a budget
2.38.160	Other fiscal matters
2.38.170	Employee relations
2.38.180	Definitions

2.38.060 Coordination.
The board shall submit to the assembly, at least quarterly, a report on Industrial Park operations and pending issues.
The Municipal Administrator or his designee shall be made an ex-officio member of the board.
The board shall adopt safety policies acceptable to the municipal risk manager or such other officer as the Director may designate.
In emergencies the Industrial Park shall, to the extent necessary to resolve the emergency, be under the control of the fire chief or such other officer as the Municipal Administrator may designate.

2.38.070 Membership in associations.
The Board of Directors may maintain membership in any local, state, or national group or association organized and operated for the promotion, improvement, or assistance in the administration of port and harbor facilities, or industrial park facilities and, in connection therewith, pay dues and fees thereto. The Assembly shall select one of its members to serve as the liaison to the Board.

2.38.080 General powers.
(a) Subject to state laws and municipal ordinances, the Board of Directors shall generally exercise all powers necessary and incidental to operation of all Sawmill Cove Industrial Park facilities in the public interest and in a sound business manner. In particular, and without limitation on the foregoing, the board:

1. Shall be responsible for the operation, maintenance, development, and marketing of the municipally owned and operated Sawmill Cove Industrial Park, including such facilities as site development, docks, and facilities appurtenant thereto.
2. Shall approve annual budgets prepared by the Industrial Park Director to be submitted to the assembly for final approval and adoption.
3. Shall formulate and prepare Planning Documents for the ongoing development of the Industrial Park.
4. Shall enforce all rules and regulations necessary for the administration of the facilities under its management. Said rules and regulations shall be prepared and amended by the Board and subject to the final approval of the assembly before implementation.
5. Shall prescribe the terms under which persons and vessels may use the facilities and shall establish and enforce standards of operation, consistent with the Prospective Purchasers Agreement and the State of Alaska Department of Environmental Conservation Management Plan and the Conveyance Agreement with Alaska Pulp Corporation.
6. Shall, within the Industrial Park appropriation and in general conformity with the rates of pay established for municipal positions of similar responsibility, establish, and may amend, the pay plan for Industrial Park municipal employees.
7. Shall administer and dispose of tideland, submerged land, and other land identified by the assembly by ordinance as subject to Sawmill Cove Industrial Park administration, subject to the following limitations:

(A) Any sale, purchase, or trade of land other than short term lease (which may be approved by the Municipal Administrator) shall be subject to approval by the assembly by resolution.
(B) All land transactions by the board in accordance with this section shall be governed by this chapter rather than Title 18 of this code, as follows:

1. The long term leasing of all of the property at the Sawmill Cove Industrial Park is hereby authorized regardless of value.
2. Leases shall be granted to the highest responsible bidder unless the assembly, determines that because of the nature of the trust to be leased, the nature of the business being sought for the lease (of seeking a lease) or the number of jobs to be produced, that competitive bidding is inappropriate and the terms of the proposed lease, including price, should be negotiated. Applications for non-bid dispositions shall be referred to the board for recommendations.

8. May propose capital improvement projects to and apply for funding from state and federal agencies; provided that such request shall be subject to prioritization by the assembly with other municipal capital improvement funding requests.
9. Shall, on behalf of the municipality, enter into memoranda of understanding, permit negotiations and similar agreements with public agencies for Industrial Park purposes. The board may negotiate and enter into contracts for goods and services pursuant to regulations set out in this ordinance; provided that all legal services shall be provided by or under the supervision of the Municipal Attorney. All services provided by a municipal agency other than the Municipal Attorney shall be pursuant to a memorandum of understanding or other instrument providing for payment or such other settlement as the Municipal Administrator and board may approve. Contracts for public improvements and, whenever practicable, other purchase of supplies, materials, equipment, and services, except professional services and services of officers and municipal employees, shall be by competitive bid and awarded to the lowest qualified bidder according to the procedures established in SGC Title 18. all contracts, and purchased items specifically identified within the Sawmill Cove Industrial Park budget shall not require prior assembly approval. All contracts and purchases shall require Municipal Administrator approval.

2.38.090 Leasing powers.
All leases of land, whether uplands or tidelands, within the Sawmill Cove Industrial Park are subject to the leasing provisions set forth in this chapter.

2.38.100 Adoption of regulations.
The Board of Directors shall adopt regulations for the administration of the industrial park. The Board shall submit regulations to the Assembly for review prior to final adoption.

2.38.110 Sawmill Cove Industrial Park Director designated appointment.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 03-1751

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA
REPEALING AND REENACTING CHAPTER 18.16 TIDELAND LEASE PROCEDURE
OF THE SITKA GENERAL CODE SO AS TO CHANGE
THE PROCEDURES FOR THE CITY AND BOROUGH TO LEASE TIDELANDS

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.

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

3. PURPOSE. This ordinance is intended to streamline the tidelands lease process while maintaining a sound public process. This ordinance would remove several unnecessary and cumbersome administrative details have been removed that are not appropriate for inclusion in a municipal code. This ordinance would leave in place the basic steps for leasing tidelands, while creating a process that can be easily followed and implemented.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that Chapter 18.16 of the Sitka General Code is repealed and reenacted to read as follows:

Chapter 18.16
TIDELAND LEASE PROCEDURE

Sections:

18.16.010	**Generally.**
18.16.020	**Leases and permits.**
18.16.030	**Government leases and permits.**
18.16.035	**Types and classes of leases and permits.**
18.16.040	**Approval of Classes for permits and leases.**
18.16.050	**Procedures and fees for Class I, Class II, and Class III Approvals.**
18.16.060	**Class IIA, Class IIB, and Class IIC Approvals – Application Requirements.**
18.16.070	**Class IIA, Class IIB, and Class IIC Notification Requirements.**
18.16.080	**Class IIA, Class IIB, and Class IIC Review – Planning Commission.**
18.16.090	**Class IIA and Class IIB Review – Assembly.**
18.16.100	**Class III Pre-application advice.**
18.16.110	**Class III Formal application.**
18.16.120	**Class III Plat requirements.**
18.16.130	**Class III Lease preference rights and nonpreference rights.**
18.16.140	**Class III Notification of upland owner.**

18.16.150 Class III Preliminary approval.
18.16.160 Class III Notice of auction and intended lease.
18.16.170 Class III Ratification by voters.
18.16.180 Class III Protest.
18.16.190 Class III Determination of lease price.
18.16.200 Class III Lease by ordinance.
18.16.210 Class III Annual lease payments and terms.
18.16.220 Class III Direct lease by municipality.
18.16.230 Execution of permit and lease documents.

18.16.010 Generally.

When in the best interests of the municipality the city and borough may grant leases to tidelands, filled tidelands, tidelands in the intertidal area, submerged tidelands, submerged lands, and reclaimed lands as outlined below. (Ord. 01-1605 § 4 (part), 2001.)

18.16.020 Leases and permits.

The municipality may grant leases or permits for the use of Sitka-owned tidelands, filled tidelands, tidelands in the intertidal area, submerged tidelands, submerged lands, and reclaimed lands under such policy directions and conditions as the assembly shall set from time to time. Leases and permits shall be subject to all other applicable municipal, state, and federal regulations. (Ord. 01-1605 § 4 (part), 2001.)

18.16.030 Government leases and permits.

When leases or permits are issued to other local, state, or federal governmental units or a corporation or agency through which the governmental unit acts, there is no limit to the front footage obtainable, or valuation limit and no requirement of an election as set out by Sections 18.12.010 and 18.16.110, and no consideration for such a lease shall necessarily be required. (Ord. 01-1605 § 4 (part), 2001.)

18.16.040 Approval of Classes for permits and leases.

A. There shall be three classes of approvals for permits and leases.
B. **Class I** Approvals which are for permits for use of tidelands that are cancelable by the municipality on thirty days notice.
C. **Class II** Approvals, are for personal use docks and facilities are immediately seaward of deeded lands and deeded tidelands.
D. The approval of **Class IIA** facilities shall grant the owner exclusive use of a personal use dock with a perimeter that does not exceed 300 linear feet and the tidelands that are immediately adjacent the facility.
E. **Class IIB** approvals are for exclusive use of personal use docks with a perimeter of more than 300 linear feet.
F. **Class IIC** approvals are for mooring buoys.
G. **Class III** Approvals, which are for leases for commercial docks and facilities and/or personal docks that include the lease of space and facilities. The approval of Class III facilities shall grant the facility owner exclusive use of the facility. The area required for the berthing of all vessels shall be included in the lease area. Class III facilities include community use docks or docks

and any other matter related to the tidelands and set a minimum bid price. (Ord. 01-1605 § 4 (part), 2001.)

18.16.160 Class III Notice of auction and intended lease.

Notice of auction and of the application for lease shall be contained in one notice and shall be made substantially as follows:

The municipal clerk shall publish three times over a three week period at the expense of the applicant, a notice in at least one newspaper of general circulation in the vicinity in which the land, property, or interest therein is to be leased, and provided that the lease of lands be held after the end of the three week advertisement period. Copies of this notice shall be served on adjacent property owners by a copy being sent to them by first class mail.

The notice shall set forth the following:

A. A general description of the request;
B. The date, if any, time and place, and the general terms, including the minimum bid, if any, of the sale, lease, or other disposal;
C. The location and description of the lands or interest therein and the improvements thereon; and
D. The preference or preference rights claimed, if any.

(Ord. 01-1605 § 4 (part), 2001.)

18.16.170 Class III Ratification by voters.

Lease of tidelands to other than preference right holders for areas which have more than two hundred fifty feet of frontage along the upland meander line, or lease of any tidelands valued above seven hundred fifty thousand dollars, shall be submitted to the voters for election ratification. This section shall not apply to leases at the former Alaska Pulp Corporation mill site, and the property leased under Ordinance 99-1539. (Ord. 01-1605 § 4 (part), 2001.)

18.16.180 Class III Protest.

Anyone may file a protest with respect to the grant, sale, lease, or other disposal of tidelands or materials thereon or therein. Such protest shall be in writing and contain a statement as to the nature and reason for the protest. Each protest so made shall be filed with the municipal clerk during the period of publication. Failure to protest shall constitute a waiver. (Ord. 01-1605 § 4 (part), 2001.)

18.16.190 Class III Determination of lease price.

Lease price shall finally be determined by open auction. The Assembly shall set the upset price for the auction and advertise the minimum price. In determining the minimum price, the Assembly may rely on the Municipal Assessor's advice as to value and consider such additional input, as it may desire. The minimum price shall be no less than the value established by the municipal assessor.

In addition to a minimum bid, the Assembly may require a development plan from each bidder and may evaluate such plans for acceptability prior to auction. Acceptability shall be based upon a determination that the plan would enhance the long range development of the municipality and benefit the public. (Ord. 01-1605 § 4 (part), 2001.)

18.16.200 Class III Lease by ordinance.

Should the auction be held and a bid accepted by the Assembly, the lease shall be executed subject to passage of an ordinance authorizing the lease. If the lease is subject to ratification by the voters, the authorizing ordinance should also authorize putting the question to the voters at the next regular or special municipal election. (Ord. 01-1605 § 4 (part), 2001.)

18.16.210 Class III Annual lease payments and terms.

A. The annual lease payment to the municipality shall be nine percent of the price established at the auction plus sales tax.

B. On the seventh anniversary of each lease, and each seven years thereafter the annual lease payment shall be adjusted as follows: The annual lease payment shall be changed by the percentage change in the amount (expressed in dollars and cents) established by dividing the grand total land value on the official municipal real property assessment roll for the initial lease year by the number of that year's real property tax accounts, compared with a similar calculation using the figures seven years later. Each lease shall state the base figure and tax year on which it was calculated. The term shall be thirty years unless otherwise determined by the Assembly.

C. The Assembly may require such other terms and conditions as it may desire to be included in the lease at its commencement.

(Ord. 01-1605 § 4 (part), 2001.)

18.16.220 Class III Direct lease by municipality.

By ordinance the municipality may elect to lease tidelands upon its own initiative upon such terms as are set out in the ordinance.

Tidelands leased by the direct lease procedure shall be subject to a ratification election whenever applicable by other sections of the Sitka General Code. (Ord. 01-1605 § 4 (part), 2001.)

18.16.230 Execution of permit and lease documents.

A. Following any approval the Administrator shall prepare and execute lease documents. Those documents shall include clauses covering termination of leases for non payment and ownership of facilities involving terminated or expired leases.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 25th day of November 2003.

Fred Reeder, Mayor

ATTEST:

Colleen Pellett, CMC
Municipal Clerk

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2006-39

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA REPEALING AND REENACTING SGC 18.12.014 TO REQUIRE VOTER APPROVAL BEFORE THE CITY AND BOROUGH OF SITKA SELLS, LEASES, OR DISPOSES OF REAL PROPERTY FOR A DOCK OR VESSEL TRANSFER FACILITY THAT COULD BE USED BY LARGE CRUISE SHIPS, AND REQUIRING THE CITY AND BOROUGH OF SITKA TO PROVIDE INFORMATION BEFORE THE VOTE.

1. CLASSIFICATION. This ordinance is of a permanent nature. Section 3 is intended to become a part of the Sitka General Code upon election certification.

2. PURPOSE. The purpose of this ordinance is to provide the residents of Sitka, Alaska with information and require a public vote before the City and Borough of Sitka disposes of real property for any dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length.

3. ENACTMENT. NOW, THEREFORE, BE IT ENACTED that Sitka General Code Section 18.12.014 is hereby repealed and reenacted to read as follows:

18.12.014 Requirement for a Public Vote and Disclosure of Information for Land Disposals Related to a Dock or Vessel Transfer Facility that could be used by Large Cruise Ships.

A. Notwithstanding Sections 2.38.080 A.7 and 2.38.090 or any other provision of law, any ordinance authorizing the sale, lease or disposal of any real property of the City and Borough for a dock or vessel transfer facility that could be used by cruise ships exceeding three hundred feet in length shall be effective only after an affirmative vote of the electorate. Not less than thirty days prior to the election, the City and Borough shall make available to the electorate the terms of the proposed sale, lease or disposal of real property and a summary of the direct anticipated costs to the City and Borough.

B. This section applies to tidelands and other real property owned by the City and Borough, including any real property in Sawmill Cove.

4. EFFECTIVE DATE. This ordinance shall become effective immediately on certification by the Assembly if the results of the election show that a majority of the qualified voters approved enactment.

PASSED BY A MAJORITY VOTE OF THE ELECTORATE AT A REGULAR MUNICIPAL ELECTION HELD OCTOBER 3, 2006.

Results: YES = 1912
NO = 1057

Marko Dapcevich, Mayor

ATTEST:

Colleen Pellett, MMC
Municipal Clerk

AMENDED 7/26/83
AMENDED 8/9/83
AMENDED 9/13/83
AMENDED 9/27/83

C I T Y A N D B O R O U G H O F S I T K A

ORDINANCE NO. 83-556

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA ENACTING A NEW PROPERTY TITLE 18 TO THE SITKA GENERAL CODE

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the SITKA GENERAL CODE.

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

3. PURPOSE. In the twelve years since unification the property section of the Sitka General Code has not received major review. Based upon experience during that time many improvements have been suggested. It seems preferable to do an entire redraft rather than piecemeal the changes.

4. ENACTMENT.

NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka as follows:

Title 18 of the Sitka General Code is hereby repealed and reenacted to read as follows below, with the exception of Section 18.62 (Public Improvements, Bonding Requirements) which remains unchanged but is renumbered to be Section 18.32.

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REAL PROPERTY DISPOSAL

Chapter 18.12

18.12.010 Real Property Disposal.

A. Real property, including tidelands, and land acquired from the state, may be sold or leased only when authorized by ordinance. Lease of space within municipal buildings shall be treated as disposals of personal property without ordinance.

B. Upon sale or disposal of real property valued over $150,000, or upon lease of real property, including tidelands, of a value of more than $250,000, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.

C. No election, ratification by the electorate, or competitive bid is required for

exchange of municipal property, both real and personal, including tidelands, or any interest in property, with the United States, the State of Alaska, or a political subdivision.

Such disposals to other governmental units, shall be done by ordinance.

All leases of real property and tidelands approved by the assembly and signed by the lessee prior to the date of enactment of this ordinance are hereby confirmed and ratified and voter ratification is hereby waived. (Enactment Date Sept 27, 1983)

D. The lease of any municipal property on a temporary basis may be made by the administrator upon motion of the assembly without ordinance. Temporary shall be defined as any lease terminable at the will of the

municipality where no more than thirty (30) days prior notice of intent to terminate is required.

E. Sale or lease of municipal real property, including tidelands shall be by competitive bid, unless the assembly finds that competitive bidding is inappropriate, due to the size, shape, or location of the parcel, rendering it of true usefulness to only one party, or is waived by Section (C) above.

F. When it is deemed advantageous to the municipality, it may trade uplands or tidelands for other land of approximately equal size or value. Should the municipal property in question be of such size or value or to such a class of grantee as to require an election before conveyance of title can be made, the requirements and procedures concerning such election shall apply.

G. The administrator is authorized to sign all municipal lease and conveyance documents.

C I T Y A N D B O R O U G H O F S I T K A

ORDINANCE NO. 92-1110

AN ORDINANCE OF THE CITY & BOROUGH OF SITKA AMENDING SITKA GENERAL CODE 18.12.010 AMENDING SUBSECTION B WHICH REQUIRES AN ELECTION TO AUTHORIZE SALE OR DISPOSAL OF PROPERTY OF A VALUE OVER $150,000 AND LEASE OF PROPERTY OF A VALUE OVER $250,000

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

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

3. **PURPOSE.** The amounts requiring voter approval in Sitka General Code 18.12.010B were set in 1983. Inflation and the needs of the Municipality make higher amounts desirable.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that subsection B of Sitka General Code 18.12.010 is hereby amended to set the value amounts requiring approval by the voters at $500,000 for sales of real property and $750,000 for leases of real property.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 8th day of December, 1992.

Dan Keck, Mayor

ATTEST:

Melinda L. Jenkins
Municipal Clerk

C

Supreme Court of Alaska.
SITKANS FOR RESPONSIBLE GOVERNMENT, Michael Litman, and Jeffery Farvour, Appellants,
v.
CITY & BOROUGH OF SITKA and Colleen Pellett, Municipal Clerk, Appellees.

No. S–13394.
April 20, 2012.

Background: Citizens sought municipal ballot initiative eliminating special regulations that governed real property transactions in local economic development area, and after municipal clerk twice denied petition for ballot initiative, sponsors brought action for order placing initiative on ballot. The Superior Court, First Judicial District, Sitka, David V. George, J., upheld municipal clerk's denial. Sponsor appealed.

Holdings: The Supreme Court, Carpeneti, C.J., held that:
(1) ballot initiative was not contrary to law, and
(2) language of petition for ballot initiative was not confusing or misleading.

Reversed and remanded.

West Headnotes

[1] Appeal and Error 30 ⚷893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases
Supreme Court reviews a superior court's summary judgment decision de novo, drawing all inferences in favor of, and viewing the facts in the record in the light most favorable to, the non-moving party.

[2] Municipal Corporations 268 ⚷108.3

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.3 k. Initiative procedure. Most Cited Cases
Mootness and the legality of a municipal ballot initiative are both legal questions to which the Supreme Court applies de novo review, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.

[3] Municipal Corporations 268 ⚷108.3

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268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.3 k. Initiative procedure. Most Cited Cases

When reviewing municipal ballot initiatives, the Supreme Court construes them broadly so as to preserve them whenever possible.

[4] Municipal Corporations 268 ⚷108.3

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.3 k. Initiative procedure. Most Cited Cases

Supreme Court applies a deferential standard of review for challenges to the adequacy of an municipal initiative petition summary and those attacking the summary bear the burden to demonstrate that it is biased or misleading.

[5] Municipal Corporations 268 ⚷108.3

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.3 k. Initiative procedure. Most Cited Cases

Sponsors' appeal from denial of petition for municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not moot, even though election had passed, where there was live, definite, and concrete controversy, actively litigated between adverse parties, touching upon parties' legal rights, and concerning attainable relief.

[6] Appeal and Error 30 ⚷781(1)

30 Appeal and Error
30XIII Dismissal, Withdrawal, or Abandonment
30k779 Grounds for Dismissal
30k781 Want of Actual Controversy
30k781(1) k. In general. Most Cited Cases

Supreme Court generally declines to address a moot claim, that is, a claim that has lost its character as a present, live controversy.

[7] Action 13 ⚷6

13 Action
13I Grounds and Conditions Precedent
13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases

A claim is moot if the party bringing the action would not be entitled to any relief even if it prevails.

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[8] Action 13 ⚷6

13 Action
13I Grounds and Conditions Precedent
13k6 k. Moot, hypothetical or abstract questions. Most Cited Cases
Justiciable controversies are marked by adversity between the parties: there must be a definite and concrete controversy touching the parties' legal relations, not simply hypothetical or abstract disputes.

[9] Declaratory Judgment 118A ⚷65

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak65 k. Moot, abstract or hypothetical questions. Most Cited Cases

Declaratory Judgment 118A ⚷66

118A Declaratory Judgment
118AI Nature and Grounds in General
118AI(D) Actual or Justiciable Controversy
118Ak66 k. Advisory opinions. Most Cited Cases
Mootness is particularly important in a case seeking a declaratory judgment because there is an added risk that the party is seeking an advisory opinion, which the Supreme Court seeks to avoid.

[10] Municipal Corporations 268 ⚷108.1

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.1 k. In general. Most Cited Cases
Supreme Court liberally construes the constitutional and statutory provisions pertaining to the use of municipal ballot initiatives so that the people are permitted to vote and express their will on the proposed legislation.

[11] Municipal Corporations 268 ⚷108.2

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.2 k. Matters subject to initiative. Most Cited Cases
Municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not contrary to law; although superior court held initiative to be contrary to law on theory that general city municipal land disposal ordinance, in requiring referendum for high-value disposals, violated city charter, and held that initiative, in requiring land disposal transactions to come into conformity with general ordinance, would also violate city charter, if there was problem with existing ordinance, it could not be basis for finding initiative to be contrary to law.

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[12] Municipal Corporations 268 ⚷108.3

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.3 k. Initiative procedure. Most Cited Cases

Language of petition for municipal ballot initiative, eliminating special regulations that governed real property transactions in local economic development area, was not confusing or misleading; petition clearly stated its general purpose to bring treatment of industrial park real property under same rules that governed all other city property, and then set out specific changes to city law that would accomplish purpose, and petition did not seek to persuade voters with partisan language, nor was it grammatically unclear such that voters could not reasonably understand what conduct they were authorizing.

***488** Joseph W. Geldhof, Law Office of Joseph W. Geldhof, Juneau, for Appellants.

Theresa Hillhouse, Municipal Attorney, Sitka, for Appellee City & Borough of Sitka, Michael Gatti and Leila R. Kimbrell, Wohlforth, Johnson, Brecht, Cartledge & Brooking, Anchorage, for Appellee Colleen Pellett, Municipal Clerk.

Before: CARPENETI, Chief Justice, FABE, WINFREE, and STOWERS, Justices.

OPINION

CARPENETI, Chief Justice.

I. INTRODUCTION

Citizens sought a ballot initiative eliminating the special regulations that govern real property transactions in a local economic development area. After the municipal clerk twice denied the petition for a ballot initiative, the sponsors sued for an order placing the initiative on the ballot. Finding the petition to be both contrary to existing law and misleading, the superior court upheld the municipal clerk's denial. The sponsors appealed. Because we conclude that the petition is neither contrary to existing law nor misleading, we reverse.

II. FACTS AND PROCEEDINGS

A. Facts

1. The petition

On June 25, 2008, Jeffery Farvour filed a petition for a ballot initiative with the municipal clerk of the City and Borough of Sitka.[FN1] The initiative would change how Sitka manages Sawmill Cove Industrial Park (Sawmill Cove).

FN1. The petition states:

CITY AND BOROUGH OF SITKA

ORDINANCE NO.2008–____

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AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA

REPEALING AND/OR REENACTING PORTIONS OF TITLE 2 & TITLE 18 OF THE SITKA GENERAL CODE TO REQUIRE THAT THE SALE, LEASE OR DISPOSALS OF REAL PROPERTY WITHIN SAWMILL COVE INDUSTRIAL PARK BE CONSISTENT WITH AND CONFORM TO THE PROPERTY DISPOSAL ORDINANCES CONTAINED IN TITLE 18, INCLUDING A PUBLIC VOTE, IF NECESSARY.

1. ***CLASSIFICATION.*** This ordinance is of a permanent nature. Section 3 is intended to become a part of the Sitka General Code upon election certification.

2. ***PURPOSE.*** The purpose of this ordinance is to require that the administration and disposals of tidelands, submerged land, and other real property in the Sawmill Cove Industrial Park take place and is governed by Title 18 of the Sitka General Code and, as necessary that disposals of property within the Sawmill Cove Industrial Park are subject to a public vote.

3. ***ENACTMENT.*** **NOW, THEREFORE, BE IT ENACTED** that Sitka General Code Section 2.38.080(a)(7) is repealed and reenacted to read as follows:

7. All land transactions shall be governed in accordance with Title 18 of Sitka General Code.

BE IT FURTHER ENACTED that Sitka General Code Section 2.38.090 (Ord. 00–1568 § 4 (part), 2000.), pertaining to leasing powers is repealed.

BE IT FURTHER ENACTED that Sitka General Code Section 18.12.010(B) is repealed and reenacted to read as follows:

B. Upon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.

4. ***EFFECTIVE DATE.*** This ordinance shall become effective immediately on certification by the Assembly if the results of the election show that a majority of the qualified voters approved enact- ment.

Sawmill Cove is the former site of the ***489** Alaska Pulp Corporation mill. [FN2] Sitka acquired the site in 2000 to manage economic development. [FN3] According to the purpose statement of the municipal acquisition:

FN2. *See* Sitka General Code (SGC) 02.38.080(A)(5) (2009) (noting conveyance agreement with Alaska Pulp Corporation).

FN3. Sitka Ordinance (SO) 00–1568 (2000).

Unlike other property owned by the municipality, [Sawmill Cove] was acquired ... for economic development and disposal. In general, the property will not be used for public improvements. It will be leased or sold to individuals and corporations to develop business opportunities and provide jobs. For that reason, it is important

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to enact a procedure for property management and disposal at the site which more closely corresponds to private sector disposals.[FN4]

FN4. *Id.*

Accordingly, Sitka manages the site through a Board of Directors (the Board), whose extensive control over the site includes the power to operate, develop, budget for, and regulate Sawmill Cove.[FN5] The Board may enter into contracts on behalf of Sitka,[FN6] and the Board may dispose of Sawmill Cove property.[FN7]

FN5. SGC 02.38.080(A).

FN6. *Id.* at (A)(9).

FN7. *Id.* at (A)(7).

The Board's power to dispose of Sawmill Cove property is broader than the city's power to dispose of other property. In order to sell, lease, buy, or trade real property in Sawmill Cove, the Board needs only the support of the Sitka assembly, in the form of a resolution.[FN8] Short-term leases require only the municipal administrator's approval.[FN9] In contrast, Sitka is more limited regarding disposal of its other, non-Sawmill Cove properties. Before the assembly can sell other real property valued over $500,000 or enter into a lease valued over $750,000, the assembly must pass an ordinance and Sitka voters must ratify the action in an election.[FN10]

FN8. *Id.*

FN9. *Id.* at (A)(7)(a).

FN10. SGC 18.12.010(B).

The petition giving rise to this case would eliminate the Board's broad authority to transact real property in Sawmill Cove, and would instead require those transactions to comply with the normal requirements for any Sitka municipal land transaction. To do this, the petition revokes the language in Sitka General Code 02.38.080(A)(7), which contains the special procedures for transacting Sawmill Cove property. Instead, that section would read: "All land transactions shall be governed in accordance with Title 18 of Sitka General Code." Title 18 contains the normal procedures for Sitka's municipal land transactions.[FN11] That means that Sawmill Cove would be governed by the normal requirement that voters ratify any high-value land transaction—sales over $500,000 or leases over $750,000.[FN12] The change to Title 18 would also eliminate the Board's ability to execute short—term leases with only the municipal administrator's approval; instead, assembly approval would be required.[FN13] Finally, the change would impact all land transactions—large or small, lease [FN14] or sale [FN15]—by removing the Board's authority to ***490** initiate such actions and instead requiring municipal action.

FN11. *See* SGC 18.12.010.

FN12. *Id.* at (B).

FN13. *See supra* note 1. The third section of the ballot initiative (titled "Enactment") proposed eliminating the current SGC 02.38.080(A)(7)(a), which only requires administrative approval for short-term leases in Sawmill Cove, and replacing it with SGC 18.12.010, which would require authorization by ordinance of any lease, with certain minor exceptions.

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FN14. *See supra* note 1. The third section of the ballot initiative proposed replacing the current SGC 02.38.080(A)(7), the section of the ordinance that allows the Board to administer and dispose of property (sometimes subject to assembly approval) with the procedures in SGC 18.12.010, which grants no authority to the Board and requires an ordinance for most transactions.

FN15. *See supra* note 1. The petition makes two other minor changes to the Sitka code, each removing language currently stating that Sawmill Cove is not subject to Title 18. The petition would repeal SGC 02.38.090 (clarifying that Sawmill Cove leases are pursuant to Title 2, chapter 38) and amend SGC 18.12.010(B) (currently exempting Sawmill Cove property from Title 18).

2. Sitka's denial of the petition

Jeffery Farvour's June 25, 2008 petition identified Farvour and Michael Litman (the sponsors) as contacts for the petition, and sought approval to begin collecting signatures to qualify the petition for the October 7, 2008 election.[FN16] Sitka forwarded the petition to its outside counsel, which responded with many reasons to deny the petition. Although it is unclear how strong these reasons are,[FN17] the outside counsel found that the petition (1) is confusing and misleading; (2) appropriates a public asset; (3) relates to an administrative matter; (4) is inconsistent with existing code; (5) is inconsistent with the local planning process; (6) immediately affects public health, safety, and welfare; (7) does not provide an effective date; and (8) conflicts with a requirement for Department of Justice pre-clearance. Accordingly, Sitka Municipal Clerk Colleen Pellett denied the petition on July 10, 2008. Although her denial notice was cursory, she attached the more extensive memo from outside counsel.

FN16. To qualify for the Sitka ballot, an initiative must be signed by at least as many people as constitute 20% of the total number of electors voting at the last regular annual election. Home Rule Charter of City and Borough of Sitka Art. 6.01 (2009).

FN17. For example, the paragraph alleging that the petition concerns an administrative matter contains no analysis. Several other arguments raised in the memo are also conclusory.

On July 22, 2008, Litman submitted an amended petition on behalf of **Sitkans** for **Responsible** Government. A cover letter discussed the concerns listed in the July 10 denial, but the petition corrected only two minor problems. [FN18] Sitka again forwarded the petition to its outside counsel, which responded with a memorandum highlighting essentially the same issues as it had in the first petition. The municipal clerk denied this second petition on August 5, 2008, again including a memo from outside counsel.

FN18. First, the new version stated that Sawmill Cove requirements would "be consistent with and conform to" Title 18, whereas the original petition had only stated "conform to." Second, the new petition corrected a typographical error so that 18.12.010(B) would be repealed, not 18.38.080(B), which had been erroneously listed in the original petition.

B. Proceedings

On August 8, 2008, the sponsors filed a complaint in superior court. [FN19] They sought an injunction directing the clerk to certify the initiative for inclusion in the regular municipal election and declaratory relief confirming the propriety of the initiative. Superior Court Judge David V. George granted a preliminary injunction against Sitka and ordered the clerk to provide the sponsors with signature booklets so that they could gather signatures, which was done. The superior court then held an expedited hearing on August 19 and, in an order issued August 27, the court denied the sponsors' request for relief.

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FN19. **Sitkans** for **Responsible** Government was the lead plaintiff, but the superior court eventually dismissed the group for lack of standing.

In its subsequent written decision, the superior court denied the sponsors' motion for summary judgment and dismissed the sponsors' complaint. Based on two independent grounds, the superior court upheld the Sitka clerk's denial of the petition for a ballot initiative: the court held (1) the initiative is contrary to law and unenforceable, and (2) the initiative is misleading and confusing.[FN20] The sponsors now appeal both of these holdings. Sitka, in turn, contends the case is moot.

FN20. The court found unsupported a third reason—that the initiative was illegally used to make an appropriation. And the court did not reach a fourth reason—that the initiative improperly concerns administrative action. We note that courts should rule on all the reasons given for rejecting citizen petitions. Piecemeal litigation and piecemeal appeals can delay and potentially thwart the ability of the people to initiate laws or to decide not to do so. Ruling on all the reasons given for rejecting citizen petitions will prevent citizens from having to return to the courthouse multiple times to secure a spot on the ballot for their initiatives.

***491 III. STANDARD OF REVIEW**

[1][2] We review a superior court's summary judgment decision de novo, drawing all inferences in favor of, and viewing the facts in the record in the light most favorable to, the non-moving party.[FN21] Mootness [FN22] and the legality of a ballot initiative [FN23] are both legal questions to which we also apply de novo review, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.[FN24]

FN21. *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell,* 215 P.3d 1064, 1072 (Alaska 2009) (citing *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage,* 151 P.3d 418, 422 (Alaska 2006)).

FN22. *Ulmer v. Alaska Rest. & Beverage Ass'n,* 33 P.3d 773, 776 (Alaska 2001).

FN23. *Pebble Ltd.,* 215 P.3d at 1072.

FN24. *Id.; Jacob v. State, Dep't of Health & Soc. Servs.,* 177 P.3d 1181, 1184 (Alaska 2008).

[3][4] When reviewing initiatives, we construe them broadly so as to preserve them whenever possible. [FN25] We apply a deferential standard of review for challenges to the adequacy of a petition summary and "[t]hose attacking the summary bear the burden 'to demonstrate that it is biased or misleading.' " [FN26]

FN25. *Pebble Ltd.,* 215 P.3d at 1073 (citing *Anchorage Citizens for Taxi Reform,* 151 P.3d at 422).

FN26. *Id.* (citing *Alaskans for Efficient Gov't, Inc. v. State,* 52 P.3d 732, 735 (Alaska 2002)).

IV. DISCUSSION

A. The Issues On Appeal Are Not Moot.

[5] Sitka contends this appeal is moot because the October 7, 2008 election has passed. Assuming the sponsors' request to be included on a ballot refers only to the October 2008 election, Sitka points out certification for a past election is impossible and the case is therefore moot. Further, regarding the sponsors' request for declarat-

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ory relief, Sitka asserts any relief upholding the petition's language would constitute an improper advisory opinion for a hypothetical future petition. Again, this assumes the sponsors would have to file a new petition for an upcoming election. However, because Sitka has not actually demonstrated the sponsors would need to file a new petition, and because this case is rich with adversity, we do not find it to be moot.

[6][7][8][9] We generally decline to address a moot claim—that is, a claim that "has lost its character as a present, live controversy." [FN27] A claim is moot if "the party bringing the action would not be entitled to any relief even if it prevails." [FN28] By contrast, justiciable controversies are marked by adversity between the parties: There must be a "definite and concrete" controversy touching the parties' legal relations, not simply "hypothetical or abstract" disputes.[FN29] "Mootness is particularly important in a case seeking a declaratory judgment because there is an added risk that the party is seeking an advisory opinion," [FN30] which we seek to avoid.[FN31]

FN27. *Kodiak Seafood Processors Ass'n v. State,* 900 P.2d 1191, 1195 (Alaska 1995); *Ulmer,* 33 P.3d at 776.

FN28. *Ulmer,* 33 P.3d at 776 (internal quotation marks omitted).

FN29. *Kodiak Seafood Processors Ass'n,* 900 P.2d at 1195; *see also Ulmer,* 33 P.3d at 776 (stressing the adversity requirement).

FN30. *Kodiak Seafood Processors Ass'n,* 900 P.2d at 1195.

FN31. *Earth Movers of Fairbanks, Inc. v. State, Dep't of Transp. & Pub. Facilities,* 824 P.2d 715, 718 (Alaska 1992).

Sitka relies on *Ulmer v. Alaska Restaurant & Beverage Ass'n,*[FN32] which concerned mootness in the context of a ballot initiative. There, the State appealed the superior court's decision that the lieutenant governor's petition summary was legally defective.[FN33] But the sponsors of the initiative had dropped out of the litigation, [FN34] and we were not convinced the sponsors could legally reinvigorate***492** the petition if it were upheld. [FN35] We said that such "speculation about what other parties may choose to do in the future is exactly the sort of indeterminacy the mootness doctrine was developed to avoid." [FN36]

FN32. 33 P.3d 773 (Alaska 2001).

FN33. *Id.* at 774.

FN34. *Id.* at 776–77.

FN35. *Id.* In fact there was no reason to believe the sponsors would even try to do so, since they were not taking part in the litigation. *Id.*

FN36. *Id.* at 777.

Unlike *Ulmer,* the litigants in this case remain actually adverse: The parties that filed the petition and litigated the case below remain actively engaged in the litigation. More importantly, Sitka has pointed to no authority barring this petition from being placed on an upcoming ballot.[FN37] This is of particular importance because the sponsors' complaint does not request inclusion in any particular election. Accordingly, the injunctive relief

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the sponsors request is available. And because their initiative could be placed on an upcoming ballot, the sponsors' request for declaratory relief upholding the wording of their petition is appropriate—that is, our decision will affect the actual petition in question and will not result in an advisory opinion for a hypothetical future petition. Accordingly there is a live, definite, and concrete controversy, actively litigated between adverse parties, touching upon the parties' legal rights, and concerning attainable relief. The case is therefore not moot. We turn to the merits of that controversy.

FN37. *See* SGC 02.40.040 (2008) (providing time limits for gathering signatures and rejecting petitions, but not for placing petitions on the ballot).

B. It Was Error To Hold That The Petition Is Contrary To Law And Unenforceable.

Of the two grounds the superior court gave on which to uphold the municipal clerk's denial of the petition, the first is that the petition is contrary to existing law. The superior court found Sitka's existing procedures for land transactions conflict with the Sitka Charter, and therefore the petition—requiring Sitka's general procedures to be used in Sawmill Cove—also conflicts with the Charter. Specifically, the conflict is between Title 18's requirement that high-value land transactions be ratified by voters (i.e., through a referendum),[FN38] and article 6, section 1 of the Sitka Home Rule Charter, which states Sitka cannot have a referendum without advance support (signatures) from 20% of the number of people voting in the last election.

FN38. SGC 18.12.010(B) (2008).

The sponsors first argue that this holding is a violation of their state constitutional right to petition, and second that their petition does not add any new procedures, let alone constitute a referendum in violation of the Charter. Because we agree with their latter claim, we cannot uphold the superior court's ruling.

1. The superior court's ruling did not implicate the sponsors' constitutional right to petition.

[10] Article XI of the Alaska Constitution provides a right of initiative and referendum regarding state law, whereas AS 29.26.100 reserves to the residents of municipalities the right of local initiative and referendum. [FN39] A city clerk may reject a petition if it would not be enforceable as a matter of law.[FN40] In *Whitson v. Anchorage,* [FN41] we upheld a clerk's denial and found unenforceable a municipal petition that conflicted with a higher law—there a state statute.[FN42] However, we liberally construe "the constitutional and statutory provisions pertaining to the use of initiatives ... so that the people are permitted to vote and express their will on the proposed legislation." [FN43]

FN39. *Carmony v. McKechnie,* 217 P.3d 818, 820 (Alaska 2009); *Griswold v. City of Homer,* 186 P.3d 558, 563 (Alaska 2008).

FN40. AS 29.26.110(a)(4).

FN41. 608 P.2d 759 (Alaska 1980).

FN42. *Id.* at 761–62.

FN43. *Carmony,* 217 P.3d at 820 (internal quotations and bracketing omitted); *see also Citizens for Implementing Med. Marijuana v. Municipality of Anchorage,* 129 P.3d 898, 901 (Alaska 2006).

***493** The sponsors' argument that the superior court's order violated the Alaska Constitution is unpersuasive because the constitutional provisions cited by the sponsors pertain to state initiatives and referenda, while muni-

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cipal initiatives and referenda are instead governed by state statutes.[FN44] We must look to those statutes, which allow a clerk to deny a petition that would be unenforceable because it conflicts with existing law, to resolve this first issue.[FN45]

FN44. *See Carmony,* 217 P.3d at 820; *Med. Marijuana,* 129 P.3d at 901.

FN45. AS 29.26.100(a); *Whitson,* 608 P.2d at 761–62.

2. It was error to hold that the initiative was contrary to law.

[11] The superior court held the initiative to be contrary to law on the theory that the general Sitka municipal land disposal ordinance—in requiring a referendum for high-value disposals—violates the Sitka Charter. The superior court held that the initiative, in requiring Sawmill Cove land disposal transactions to come into conformity with the general ordinance, would by definition also violate the Charter. We conclude that if there is a problem with the existing ordinance, it cannot be the basis for finding an initiative to be contrary to law.

The specific problem found by the court was that, while it was an initiative in form, the sponsors' petition "would create a blanket or compulsory referendum for certain future actions of the Assembly. Specifically, the initiative mandates a referendum vote for all future assembly actions [in high-value Sawmill Cove transactions]." It would do so, the court found, because under current Sitka General Code 18.12.010, large-scale disposals of municipal land must be ratified by the voters. The court characterized such ratification as a referendum. In attempting to bring large-scale municipal land disposals in Sawmill Cove under the same rules and procedures governing other large-scale municipal land disposals, the initiative would subject them to the requirement of voter approval. Thus, the court found, the initiative "dispenses with the Charter requirement that a proposed referendum be supported by a certain number of elector signatures before being put to the voters" and "is in direct violation of referendum requirements under City Charter and implementing ordinance and is therefore unenforceable as a matter of law."

As the sponsors persuasively argue, their initiative would do no more than bring disposals of municipal land in the Sawmill Cove area into conformity with Sitka ordinances pertaining to disposal of municipal land generally. During the course of the proceedings below and in this court, neither party argued Sitka's general ordinances pertaining to disposal of municipal land violate the Charter. Sitka's argument that the initiative would require a referendum for transactions of a certain size (and that requiring a referendum without previously obtaining the signatures of a certain number of voters would violate the Sitka Charter) completely ignores that Sitka law currently requires exactly that: a referendum for transactions of a certain size. If Sitka believes there is a conflict between SGC 18.20.010 and the Sitka Charter—an issue never explicitly decided by any court, much less raised by any party in this litigation, and an issue Sitka conceded at oral argument is not before this court—the city should amend either its Charter or the ordinance. It may not be heard to argue that a citizen initiative, which merely attempts to extend to all transactions a Sitka law currently applicable only to some transactions, is contrary to law because current law violates the Sitka Charter.

Accordingly, we reverse the superior court's ruling that the initiative in this case was in direct violation of referendum requirements and therefore unenforceable as a matter of law.

C. It Was Error To Hold That The Petition's Language Is Confusing And Misleading.

[12] As a second independent basis for upholding the clerk's denial, the superior court found the petition confusing and misleading. Specifically, the superior court found the petition confusing and misleading ***494** because it does not inform voters that it would result in automatic referenda contrary to the Sitka Charter. As ex-

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plained above, we do not agree that the petition would conflict with the Charter. Moreover, we conclude that the petition is neither confusing nor misleading.

We previously considered the legal sufficiency of proposed ordinances in *Faipeas v. Municipality of Anchorage*[FN46] and in *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage,*[FN47] both of which regarded proposed ordinances in Anchorage.[FN48] In *Faipeas,* we based our analysis on an Anchorage Municipal Code requirement that a petition "describe the ordinance or resolution sought by the petition...." [FN49] We concluded that "[a] description which is untruthful, misleading, or which is not complete enough to convey basic information as to what the ordinance does, cannot be regarded as a legally adequate or sufficient description within the meaning of the ordinance. The word 'describe' in a legal context carries the requirement that the required description must be fair and accurate." [FN50] Further, we stated that "[t]he public interest in informed lawmaking requires that referendum and initiative petitions meet minimum standards of accuracy and fairness." [FN51] We then rejected the referendum petition because the title of the petition was "partisan and potentially prejudicial." [FN52]

FN46. 860 P.2d 1214 (Alaska 1993).

FN47. 129 P.3d 898 (Alaska 2006).

FN48. *Faipeas,* 860 P.2d at 1215; *Med. Marijuana,* 129 P.3d at 899.

FN49. *Faipeas,* 860 P.2d at 1219 (emphasis added) (internal quotation marks omitted); *Med. Marijuana,* 129 P.3d at 901.

FN50. *Faipeas,* 860 P.2d at 1219; *see also Med. Marijuana,* 129 P.3d at 901 (reiterating *Faipeas* hold- ing).

FN51. *Faipeas,* 860 P.2d at 1221.

FN52. *Faipeas,* 860 P.2d at 1217, 1221. The referendum petition in *Faipeas* was titled: "REFERENDUM PETITION TO REPEAL A 'SPECIAL HOMOSEXUAL ORDINANCE.' " The contents of the petition were then laid out in much smaller print. *Id.* at 1217. We concluded that "[w]hile opponents of the ordinance regard it as giving special rights to homosexuals, proponents view it as merely adding sexual orientation to the list of other important personal characteristics and choices such as gender, religion, race, and marital status, which are protected from discrimination in public employment." *Id.*

In *Medical Marijuana,* we considered the legal sufficiency of a proposed ordinance in Anchorage.[FN53] We again noted that the Anchorage Municipal Code required a petition to "describe the ordinance or resolution sought by the petition" [FN54] and stated that our "main concern should be that all matters (legislative enactments, initiative petitions and proposed resolutions) should be presented *clearly* and honestly to the people of Alaska." [FN55] We then identified the various descriptive shortcomings and "puzzling grammatical deficiencies" of the proposed ordinance, noting that: the petition did not explain the context and purpose of the proposed initiative, the petition title was "misleading as to the proposition's scope," and the petition included multiple confusing "whereas" clauses.[FN56] On this basis we affirmed***495** the superior court's grant of summary judgment on behalf of the city.[FN57]

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FN53. *Med. Marijuana,* 129 P.3d at 901.

FN54. *Id.* The Anchorage Municipal Code no longer requires a petition to "describe the ordinance or resolution sought by the petition." *See Faipeas,* 860 P.2d at 1219 (internal quotation marks omitted). Anchorage Municipal Code 2.50.020 now requires a petition "set out verbatim the ordinance or resolution sought to be enacted or repealed by the petition" and "meet constitutional, charter and other legal requirements or restrictions." AMC 2.50.020(B)(3)(a), (c).

FN55. *Med. Marijuana,* 129 P.3d at 901 (emphasis in original).

FN56. *Id.* at 901–05. The petition at issue in *Medical Marijuana* was entitled "An Initiative Allowing Those Items Used with Marijuana Legal as Medicine or a Right to Privacy." *Id.* at 902. The text of the proposed initiative read:

> Shall Article II of the Municipal Charter be amended to add the following section:
>
> (14) The right to buy, sell, or possess those items which could be used to consume, grow or process marijuana for medicine, or as is in accord with the right to privacy protected by Article I, Section 22 of the Alaska Constitution.
>
> We noted in *Medical Marijuana* that the petition as a whole could be read either to legalize marijuana paraphernalia in specific situations or to legalize possession and sale of marijuana paraphernalia in "virtually all situations," even if not intended to be used in accordance with Alaska's medical marijuana statute or the right to privacy. *Id.* at 904.

FN57. *Id.* at 905.

Unlike the then-existing Anchorage Municipal Code in *Faipeas* and *Medical Marijuana,* section 02.40.040 of the Sitka General Code provides that petitions shall "set out fully the ordinance or resolution sought by the petition." [FN58] Notably, the word "describe" does not appear in subsection (B). [FN59] Even assuming that the requirement to "set out fully the ordinance or resolution" contains the same descriptive requirement as the then-existing Anchorage Municipal Code in *Faipeas* and *Medical Marijuana,* the sponsors' petition in the present case is neither confusing nor misleading. The petition first identifies its purpose:

FN58. SGC 02.40.040(B)(2).

FN59. *See* SGC 02.40.040(B). The superior court concluded without discussion that "[w]hile the Sitka Code does not contain the same requisite initiative description requirement as did the Anchorage code in *Faipeas,* the standards employed by the court are appropriately applied to the initiative language here." We find that it is not clear from the terms of the Sitka General Code whether Sitka intended to require a descriptive element similar to the then-existing Anchorage Municipal Code, and we note that neither *Faipeas* nor *Medical Marijuana* resolve the question of how much context, if any, is required where a home rule municipality's own code does not contain a descriptive requirement. But the question of whether a petition must include a description, even where the relevant home rule municipal law does not mandate such a requirement, is a constitutional issue not raised by the parties and not properly before us. Because we conclude that the sponsors' petition in the present case satisfies our standards as announced in *Faipeas* and *Medical Marijuana,* we decline to reach these additional questions.

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[T]o require that the administration and disposal of tidelands, submerged land, and other real property in the Sawmill Cove Industrial Park take place and is governed by Title 18 of the Sitka General Code and, as necessary that disposals of property within the Sawmill Cove Industrial Park are subject to a public vote.
The petition then states that "Sitka General Code Section 2.38.080(a)(7) is repealed and reenacted [such that all] land transactions shall be governed in accordance with Title 18 of the Sitka General Code." The petition further provides that "Sitka General Code Section 2.38.090 ... is repealed." Finally, the petition states:

Sitka General Code Section 18.12.010(B) is repealed and reenacted [such that] ... [u]pon sale or disposal of real property valued over five hundred thousand dollars, or upon lease of real property, including tidelands, of a value of more than seven hundred fifty thousand dollars, the ordinance authorizing the sale, lease, or disposition shall provide that the ordinance be ratified by a majority of the qualified voters voting at a general or special election. Any such sale, lease, or disposition shall be revocable pending the outcome of the election.

The petition clearly states its general purpose to bring the treatment of Sawmill Cove Industrial Park real property under the same rules that govern all other city property, and then it sets out the specific changes to Sitka law that will accomplish this purpose. The petition does not seek to persuade voters with partisan language,[FN60] nor is it grammatically unclear such that voters could not reasonably understand what conduct they are authorizing. [FN61] The petition language is neither confusing nor misleading. We therefore reverse the decision of the superior court.

FN60. *See Faipeas,* 860 P.2d at 1219.

FN61. *See Med. Marijuana,* 129 P.3d at 898.

V. CONCLUSION

Because the initiative is neither contrary to existing law nor confusing or misleading, we REVERSE the decision of the superior court. We REMAND for further proceedings consistent with this opinion.

CHRISTEN, Justice, not participating.

Alaska,2012.
Sitkans for Responsible Government v. City & Borough of Sitka
274 P.3d 486

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C

Supreme Court of Alaska.
ALLIANCE OF CONCERNED TAXPAYERS, INC., Appellant,
v.
KENAI PENINSULA BOROUGH, Appellee.
Kenai Peninsula Borough, Appellant,
v.
Alliance of Concerned Taxpayers, Inc., Appellee.

Nos. S–13596, S–13883.
April 6, 2012.

Background: Citizens group brought declaratory and injunctive relief action against borough, challenging sales tax increase by the borough assembly and seeking to enforce an initiative ordinance that required voter approval for capital projects above a specified cost. The Superior Court, Third Judicial District, Kenai, Carl Bauman, J., granted borough summary judgment, and denied borough's motion for attorney fees. Citizens group appealed, and borough cross-appealed.

Holdings: The Supreme Court, Fabe, J., held that:
(1) earlier voter approval of a sales tax not to exceed three percent authorized borough assembly to raise sales tax rate to three percent without submitting the increase for voter approval;
(2) initiative ordinance that required voter approval of capital projects above one million dollars violated the Alaska Constitution; and
(3) borough was not precluded by statute from seeking attorney fees incurred on the capital project initiative dispute.

Superior Court affirmed in part and reversed in part.

West Headnotes

[1] Appeal and Error 30 ⚷893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Grants of summary judgment are reviewed de novo, drawing all factual inferences in favor of, and viewing the facts in the light most favorable to, the party against whom summary judgment was granted.

[2] Appeal and Error 30 ⚷893(1)

30 Appeal and Error

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30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Questions of law and questions of statutory interpretation are reviewed de novo, adopting the rule of law which is most persuasive in light of precedent, reason, and policy.

[3] Statutes 361 ⚷181(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k181 In General
361k181(2) k. Effect and consequences. Most Cited Cases

Statutes 361 ⚷184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

Statutes 361 ⚷217.2

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.2 k. Legislative history of act. Most Cited Cases

Courts interpret the meaning of a statute according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose.

[4] Statutes 361 ⚷217.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative history in general. Most Cited Cases

Courts use a sliding-scale approach when interpreting statutes, under which the clearer the statutory language is, the more convincing legislative history must be to justify another interpretation.

[5] Municipal Corporations 268 ⚷108.1

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268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.1 k. In general. Most Cited Cases

When reviewing initiatives, courts construe voter initiatives broadly so as to preserve them whenever possible; however, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution. Const. Art. 11, § 7.

[6] Municipal Corporations 268 ⚷57

268 Municipal Corporations
268II Governmental Powers and Functions in General
268k57 k. Powers and functions of local government in general. Most Cited Cases

Courts give liberal construction to the powers of local government units.

[7] Municipal Corporations 268 ⚷60

268 Municipal Corporations
268II Governmental Powers and Functions in General
268k60 k. Powers and functions of council or other governing body. Most Cited Cases

There is a presumption that proceedings of the governing body of a municipality have been conducted in accordance with the law.

[8] Municipal Corporations 268 ⚷956(4)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k956 Power and Duty to Tax in General
268k956(4) k. Submission to popular vote. Most Cited Cases

Statute, requiring that an increase in a sales tax approved by ordinance be ratified by a majority of the voters at an election before the increase took effect, was satisfied, in regard to borough ordinance that raised the borough sales tax from two to three percent, by both a voter authorization 20 years earlier that authorized the borough assembly to levy a sales tax not to exceed three percent and the defeat of a subsequent referendum to repeal the rate increase; because the three percent rate of levy in the ordinance was not an increase from the rate previously approved by the voters no additional voter ratification was required, and a savings clause in the statute preserved the borough's right to raise the rate to the rate previously approved by voters. AS 29.45.670.

[9] Appeal and Error 30 ⚷171(1)

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(A) Issues and Questions in Lower Court
30k171 Nature and Theory of Cause
30k171(1) k. In general; adhering to theory pursued below. Most Cited Cases

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Appeal and Error 30 ⚷1078(1)

30 Appeal and Error
30XVI Review
30XVI(K) Error Waived in Appellate Court
30k1078 Failure to Urge Objections
30k1078(1) k. In general. Most Cited Cases

Citizens group on appeal waived argument that an earlier voter authorization allowing a borough sales tax rate not to exceed three percent was not a general tax levy because the levy was used for school improvements, in action challenging ordinance adopted by borough assembly increasing the borough's sales tax to three percent on the basis that it was not authorized by voters, by failing to raise the argument in the trial court or in its opening appellate brief. AS 29.45.670.

[10] Municipal Corporations 268 ⚷108.2

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.2 k. Matters subject to initiative. Most Cited Cases

A two-part inquiry is used to determine whether a particular municipal initiative is an improper appropriation that violates provision in the Alaska Constitution that prohibits initiatives from being used to dedicate revenues or to make or repeal authorizations: (1) the court determines whether the initiative deals with a public asset, and (2) the court determines whether the initiative would appropriate the public asset, which involves looking to the two core objectives of the constitutional limitation, which are to prevent give-away programs that appeal to the self-interest of the voters and to preserve legislative discretion by ensuring the legislature retains control over the allocation of state assets among competing needs. Const. Art. 11, § 7.

[11] Municipal Corporations 268 ⚷108.2

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k108 Initiative
268k108.2 k. Matters subject to initiative. Most Cited Cases

Initiative ordinance requiring borough assembly to seek voter approval for capital projects that exceeding one million dollars violated provision in Alaska Constitution that prohibited initiatives from being used to dedicate revenues or to make or repeal authorizations, as the voters' ability to veto a capital project infringed on the borough assembly's ability to allocate resources among competing uses. Const. Art. 11, § 7.

[12] Municipal Corporations 268 ⚷1040

268 Municipal Corporations
268XVI Actions
268k1040 k. Costs. Most Cited Cases

Statute precluding an award of attorney fees to the prevailing party in an action to establish, protect, or enforce a right under the Alaska Constitution did not preclude an award of attorney fees to borough and against cit-

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izens group that unsuccessfully sought to enforce initiative ordinance that required voter approval for capital projects above a specified cost, as local initiative power was statutory rather than constitutional. Const. Art. 11, § 7; AS 09.60.010(c)(2), 29.26.100.

[13] Statutes 361 ⚷206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving effect to entire statute. Most Cited Cases
Courts construe a statute so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.

***1130** Kenneth P. Jacobus, Kenneth P. Jacobus, P.C., Anchorage, for Appellant/Appellee **Alliance** of **Concerned Taxpayers**, Inc.

Colette G. Thompson, Borough Attorney, and Holly B. Montague, Deputy Borough Attorney, Soldotna, for Appellee/Appellant Kenai Peninsula Borough.

Before: CARPENETI, Chief Justice, FABE, WINFREE, and STOWERS, Justices.

OPINION

FABE, Justice.

I. INTRODUCTION

This case concerns the validity of two 2005 Kenai Peninsula Borough (Borough) ordinances: one enacted by the Borough Assembly and the second enacted by voter initiative. The Borough Assembly enacted an ordinance in June 2005 that increased the sales tax rate from two percent to three percent. Then in an October 2005 election, Borough voters passed an initiative that required prior voter approval for all Borough capital projects with a total cost of more than one million dollars.

The **Alliance** for **Concerned Taxpayers** (ACT) challenged the sales tax increase and sought to enforce the capital projects voter approval requirement. ACT argued that the sales tax increase was impermissible under state statute because it was enacted without ratification by Borough voters. The Borough responded that voters had authorized the increase both by approving a three-percent sales tax rate in 1964 and by defeating a post-enactment referendum to repeal the increase in 2006. ACT also sought to enforce the capital project voter approval initiative. The Borough contended that requiring prior voter approval for capital projects was unlawful because it delegated budgeting authority to the voters in violation of Alaska law and because it violated the Alaska Constitution's limits on local initiative power that forbid voters to make or repeal appropriations.

The superior court granted summary judgment to the Borough on both matters: on the sales tax issue, reasoning that the 1964 voter action allowed the increase and the 2006 referendum defeat ratified it; and on the capital projects voter approval issue, reasoning that Proposition 4 was an unconstitutional use of the initiative power to appropriate a public asset. ACT appeals the merits of that ruling in case number S–13596. We affirm the superior court's grant of summary judgment on the sales tax issue and the capital project voter approval issue. We

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conclude that the 1964 voter authorization of a three-percent sales tax preserved the Borough's right to raise the rate to three percent, and that the 2006 defeat of the referendum to repeal the rate increase constituted a ratification of the increase. On the voter approval issue, we conclude that allowing voters to veto any capital improvement projects of over $1 million has the effect of diluting the Borough Assembly's exclusive control over the budget and is therefore an impermissible appropriation.

The superior court awarded the Borough attorney's fees as the prevailing party on the sales tax issue but determined that ACT was protected from paying attorney's fees on the capital project approval issue under the AS 09.60.010(c)(2) exception for constitutional litigants. The Borough cross-appeals the latter ruling in case number S–13883. We conclude that ACT has not asserted a constitutional right and that it does not fall under the constitutional litigant exception to the attorney's fees rule. We reverse the superior court's determination that ACT is protected from paying an attorney's fee award to the Borough by AS 09.60.010(c)(2).

***1131 II. FACTS AND PROCEEDINGS**

A. Facts

1. The assembly-enacted sales tax increase

The Kenai Peninsula Borough, a second-class borough,[FN1] enacted Ordinance No.2005–09 (Ordinance 9) in June 2005. Ordinance 9 increased the sales tax rate from two percent to three percent. The relevant factual background shows that in October 1964 Borough voters authorized the Assembly to levy a sales tax not to exceed three percent, and that the Assembly established a three-percent sales tax in April 1965, though it reduced the rate to two percent in August 1975.

FN1. A second-class borough is a "general law" municipality, meaning that it only has those powers conferred by statute (as opposed to a home rule borough, which may exercise all legislative powers not prohibited by law). Alaska Const. art. X, § 11; AS 29.04.010; AS 29.04.020; AS 29.04.030. A second-class borough, like all municipalities, has the general power to levy taxes and enforce ordinances. AS 29.35.010. A second-class borough has certain additional powers conferred by statute, some of which are mandatory and some of which are discretionary. *See, e.g.,* AS 29.35.150–.180; AS 29.35.210.

In June 1985 the State enacted AS 29.45.670. That statute provides: "A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election." The statute was a re-numbered modification of AS 29.53.420,[FN2] and it included a "savings clause" which directed that "[a] right or liability of a municipality existing on January 1, 1986, is not affected by the enactment of this Act." [FN3]

FN2. AS 29.53.420 provided in relevant part:

> The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12–month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

FN3. SLA 1985, ch. 74, § 89.

Twenty years later, on June 7, 2005, the Borough Assembly enacted Ordinance 9, increasing the sales tax

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rate from two to three percent. The increase was to be effective on October 1, 2005, but the effective date was later extended to January 1, 2006.[FN4] On June 8, the day after Ordinance 9 was enacted, members of ACT and others filed three applications: (1) an application for an initiative to set the sales tax rate at two percent; (2) an application for an initiative to require 60% voter approval at a regular election to approve any sales tax rate over two percent; and (3) an application for a referendum to repeal Ordinance 9. During the October 2005 election, 54.17% of Borough voters approved an initiative setting the sales tax rate at two percent and requiring a 60% supermajority voter approval to increase that rate.

FN4. Under AS 29.26.180(b), when ACT filed a referendum petition on Ordinance 9, the effective date of Ordinance 9 was suspended pending the results of the referendum election.

One year later, in October 2006, the referendum to repeal Ordinance 9 was put before the voters. The explanation of the repeal referendum in the voter's pamphlet stated that a "yes" vote would leave the sales tax at two percent, and a "no" vote would retain the ordinance and allow the sales tax to be increased to three percent. A 57.31% majority voted to retain the Ordinance. On April 3, 2007, the Assembly enacted Ordinance No.2007–07 to impose a three-percent sales tax effective January 1, 2008.

2. Prior voter approval for capital projects

During the October 2005 election, Borough voters approved Initiative Ordinance No.2005–01 (Proposition 4), which required prior voter approval for Borough capital improvement projects with a total cost of more than $1 million. As codified at Kenai Peninsula Borough Code (KPB) 05.04.110 (2005), Proposition 4 read:

(A.) All capital improvement projects to be constructed or acquired by the borough must be approved by the voters of the borough at a regular or special election, before the project is constructed or acquired if the total project cost is more than $1,000,000, including architectural, engineering, inspection, design, administration ***1132** or any other cost. This section applies to all proposed capital improvement projects to be financed with borough funds which are not the proceeds of a bond issue approved by voters. This section does not apply to insurance proceeds covering the repair or replacement of damaged borough capital improvements. A capital improvement project that is proposed to be built in phases shall include the projected cost of all phases as the total project cost for purposes of this ordinance.

(B.) When the total projected cost of a capital improvement project as defined in this section is more than $1,000,000 it must receive an affirmative vote by no less than 60 percent of the affected voters voting at a borough election for such a project to be approved.[FN5]

FN5. Proposition 4 was modified in 2008 to exclude grant funds, private gifts, and hospital plant expansion and replacement funds. It was modified again in 2010 to raise the expenditure threshold to $2,000,000 and to provide that the threshold would increase each year by $50,000. KPB 05.04.110 (2010).

ACT alleged that by the time members of ACT filed a complaint against Proposition 4 in December 2006, the Borough had approved at least two capital improvement projects costing more than $1 million without prior voter approval: the purchase of a CT scanner for South Peninsula Hospital, and replacement of the Spruce Creek bridge.[FN6] ACT also alleged that the Borough intended to continue to undertake construction of capital projects without prior voter approval "unless restrained from doing so." [FN7]

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FN6. The Borough denies that either the CT scanner or the Spruce Creek bridge would have been the types of projects properly referred to voters under Proposition 4 because the CT scanner was not a capital improvement and the Spruce Creek bridge replacement was an emergency.

FN7. In its November 1, 2008 motion for summary judgment, ACT alleged that eight other capital projects over $1 million had been approved in violation of KPB 05.04.110 (2008).

B. Proceedings

ACT filed a complaint on December 26, 2006, challenging the sales tax increase and seeking to enforce the capital project voter approval requirement. ACT requested declaratory and injunctive relief. ACT argued the sales tax increase and alleged failure to follow Proposition 4 violated due process under the Alaska Constitution and asked for an award of full costs and attorney's fees "in this public interest litigation." The Borough answered on January 23, 2007, asserting affirmative defenses including that Proposition 4 violated the constitutional prohibition on making or repealing an appropriation through the initiative power. The Borough also sought costs and attorney's fees.

1. The sales tax increase (Ordinance 9) summary judgment proceedings

In May 2007 the parties agreed that no material facts were in dispute regarding the sales tax issue, and the superior court confirmed that the issues involved were questions of law. On December 4, 2007, ACT filed a motion for summary judgment on the sales tax issue. The Borough responded by filing its own cross-motion for summary judgment.

The superior court determined, in its December 31, 2007 decision, that Ordinance 9 was valid and the sales tax rate increase to three percent would be effective on January 1, 2008. The decision cited our direction that AS 29.45.650(a), which authorizes boroughs to levy and collect a sales tax, must be interpreted "in favor of the broad power of municipal governments." [FN8] Noting that Borough voters had twice approved a sales tax rate of up to three percent at a general election, first in 1964 and again in 2006, the superior court concluded that "the voters' action in 1964 approving a sales tax rate up to three percent has continuing legal force and effect sufficient to authorize the increase to three percent in [Ordinance 9] notwithstanding AS 29.45.670." In addition, the superior court concluded that even without the 1964 approval the sales tax rate increase to three percent was valid because the October 2006 majority vote defeating the referendum on Ordinance 9 "satisfie[d] the voter approval requirement ***1133** in AS 29.45.670." The superior court granted summary judgment to the Borough.

FN8. *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1007 (Alaska 2000).

2. The capital project voter approval (Proposition 4) summary judgment proceedings

After the parties and superior court agreed in March 2008 that only issues of law remained in the dispute over Proposition 4, ACT filed a motion for summary judgment on the capital projects approval issue on November 8, 2008. The Borough again responded with a cross-motion for summary judgment on the issue.

The superior court issued a decision on March 10, 2009, ruling that Proposition 4 was invalid both as to the supermajority requirement and the voter approval requirement. Regarding the supermajority issue, the superior court stated that "a mere majority cannot impose a supermajority obligation on other voters for approval of future Borough ordinances." But the superior court determined that the supermajority provision of the initiative ordinance was severable, and so went on to address the validity of the remainder of Proposition 4. The superior court concluded that "[t]he initiative ordinance crafted by ACT restricts the appropriation power of the Borough Assembly for capital projects to prior approval by voting residents" and that " Article XI, section 7, of the Alaska

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Constitution makes it clear that the initiative power cannot be used to make or repeal appropriations." The superior court granted summary judgment to the Borough.

3. Attorney's fee proceedings

Final judgment on all issues relating to the sales tax and capital projects issues was entered on July 30, 2009. On August 13, 2009, the Borough filed a motion for attorney's fees. ACT opposed the motion, arguing that it is a "public interest non-profit corporation" and that it was "attempting to protect [citizens' and residents'] right of initiative—a right granted to them under the Constitution and the laws of the [S]tate of Alaska." In a March 18, 2010 decision, the superior court found that the capital project approval issue "implicat[ed] federal and state constitutional concepts" and concluded that ACT was protected pursuant to AS 09.60.010(c)(2) from having to pay an attorney's fee award on that issue.[FN9] On March 31 the Borough filed a motion for reconsideration, arguing that the superior court failed to consider this court's rulings establishing that the municipal initiative power is statutory, not constitutional, and that to be protected by AS 09.60.010(c)(2) a litigant must fail to prevail in "asserting" a constitutional right rather than simply lose a case "where any constitutional concepts are implicated." The superior court denied the Borough's motion for reconsideration on May 3, 2010, explaining that ACT "did raise state constitutional issues regarding the initiative restrictions on the capital projects and supermajority issues," and adding that the superior court had referenced numerous constitutional provisions in its decision on the capital project approval issue.

FN9. The superior court found that the sales tax issue "did not turn on federal or state constitutional issues" and awarded the Borough costs and attorney's fees of $2,544.75 on that issue.

ACT appeals the superior court's July 30, 2009 final judgment denying ACT summary judgment on the merits of both the sales tax and capital project voter approval issues (case number S–13596). The Borough cross-appeals the superior court's March 18, 2010 decision awarding ACT attorney's fees on the capital project approval issue (case number S–13883).

III. STANDARD OF REVIEW

[1] We review grants of summary judgment de novo, "draw[ing] all factual inferences in favor of, and view[ing] the facts in the light most favorable to, the party against whom summary judgment was granted." [FN10]

FN10. *Interior Cabaret, Hotel, Rest. & Retailers Ass'n v. Fairbanks N. Star Borough,* 135 P.3d 1000, 1002 (Alaska 2006) (internal footnotes omitted).

[2][3][4] Questions of law and questions of statutory interpretation are reviewed de novo, adopting the rule of law which is "most persuasive in light of precedent, reason, and ***1134** policy." [FN11] We interpret the meaning of a statute "according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose." [FN12] We use a "sliding-scale approach" when interpreting statutes, "under which the clearer the statutory language is, the more convincing legislative history must be to justify another interpretation." [FN13]

FN11. *Kohlhaas v. State, Office of Lieutenant Governor,* 147 P.3d 714, 717 (Alaska 2006) (citing *Alaska Action Ctr., Inc. v. Municipality of Anchorage,* 84 P.3d 989, 991 (Alaska 2004)).

FN12. *Lot 04B & 5C, Block 83 Townsite v. Fairbanks N. Star Borough,* 208 P.3d 188, 191 (Alaska 2009) (internal quotation marks omitted).

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FN13. *Interior Cabaret,* 135 P.3d at 1002.

[5] When reviewing initiatives, we "construe voter initiatives broadly so as to preserve them whenever possible. However, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution." FN14

FN14. *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage,* 151 P.3d 418, 422 (Alaska 2006) (quoting *Pullen v. Ulmer,* 923 P.2d 54, 58 (Alaska 1996)).

IV. DISCUSSION

A. The Sales Tax Voter Ratification Requirement Is Satisfied By The 1964 Authorization Of A Three-Percent Sales Tax And The 2006 Defeat Of The Repeal Referendum.

Alaska Statute 29.45.670 provides that "an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election." ACT argues that Ordinance 9, which increased the sales tax rate from two to three percent without direct ratification by the voters, is contrary to the requirements of AS 29.45.670. The Borough agrees voter ratification is required by AS 29.45.670, but argues that the requirement was satisfied by both the 1964 authorization of a sales tax rate of up to three percent and the 2006 defeat of the referendum that would have repealed Ordinance 9. ACT argues on appeal that neither of these events fulfilled the statutory requirement.

[6][7] We generally "give 'liberal construction ... to the powers of local government units.' " FN15 In regard to municipalities' power to levy and collect taxes, we have cautioned that we will "not be quick to [infer] limitations on the taxing authority of a municipality where none are expressed." FN16 And in reviewing AS 29.45.670 in *City of St. Mary's v. St. Mary's Native Corp.,* we observed that "Alaska's constitution and our prior case law require us to interpret AS 29.45.650(a) in favor of the broad power of municipal governments." FN17 Moreover, there is a "presumption that proceedings of the governing body of a municipality have been conducted in accordance with the law." FN18

FN15. *Interior Cabaret,* 135 P.3d at 1002 (quoting Alaska Const. art. X, § 1).

FN16. *Bookey v. Kenai Peninsula Borough,* 618 P.2d 567, 569 (Alaska 1980) (quoting *Liberati v. Bristol Bay Borough,* 584 P.2d 1115, 1121 (Alaska 1978)); *see also Fannon v. Matanuska-Susitna Borough,* 192 P.3d 982, 984 (Alaska 2008) (referencing a superior court's comment that there is "a long history of Alaska Supreme Court precedent broadly interpreting municipal taxation powers").

FN17. 9 P.3d 1002, 1007 (Alaska 2000); AS 29.45.650(a).

FN18. *McCormick v. City of Dillingham,* 16 P.3d 735, 738 (Alaska 2001) (quoting *Liberati,* 584 P.2d at 1118).

[8][9] ACT contends that the 1964 ordinance authorizing a sales tax rate of three percent did not satisfy the voter ratification requirement of AS 29.45.670 because the "rate of levy" referred to in the statutory text refers to the actual rate of levy in place at the time an increase is contemplated, not some earlier authorized rate of levy.FN19 The ***1135** statute specifies, however, that only "an increase in the rate of levy of a sales tax approved by ordinance" must be submitted to voters for ratification. In 1964 Borough voters approved a proposition that authorized the Borough "to the extent provided by law ... to levy a ... sales and use tax subject to such

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exemptions as the Assembly may prescribe and not exceeding three percent." In 1975 the Borough Assembly found that "a reduction in taxes [could] be made without interfering [sic] with any essential services." The Assembly therefore enacted an ordinance "lev[ying] a consumers' sales tax of two percent." No voter action was taken regarding this reduction. The public voted to allow the Borough to levy a sales tax of up to three percent and the Borough has adjusted that rate over the years without voter ratification.

FN19. ACT adds in its reply brief that the 1964 authorization dictated that the sales tax was to be used for school improvements and thus does not authorize a *general* sales tax levy of three percent. But because ACT did not raise this argument in the superior court or in its opening brief, it has waived it. *See Braun v. Alaska Commercial Fishing & Agric. Bank,* 816 P.2d 140, 145 (Alaska 1991) ("Attention to the issue [omitted from points on appeal and insufficiently briefed in an opening brief] in a reply brief does not resuscitate it."). Moreover, it appears that the proceeds from the three-percent sales tax levy now in effect under KPB 05.18.100 are also to be used exclusively for borough school purposes, as ACT appeared to admit at oral argument. *See* KPB 05.18.110 (1990).

Because the three-percent rate of levy in Ordinance 9 was not an increase from the rate previously "approved by ordinance," no additional voter ratification was required.[FN20] In addition, the savings clause included in the same chapter as AS 29.45.670 specifically preserves any "right" of the Borough as it existed in 1986.[FN21] As the Borough points out, when AS 29.53.420, the precursor to AS 29.45.670, was enacted in 1972, the Borough sales tax rate of levy was three percent. If the Borough had the right to impose a sales tax at a rate of levy of three percent in 1972, there does not appear to be any reason that the savings clause would not have preserved that right.

FN20. Similarly, ACT's argument that the "rate of levy of sales tax was actually set at 2% by ordinance several times" is unpersuasive because the rate of levy was also set at three percent by ordinance in 1965.

FN21. There is no question that municipalities and boroughs have the power to levy taxes. *See* AS 29.35.010 ("All municipalities have the following general powers, subject to other provisions of law ... (6) to levy a tax ..."); AS 29.45.650(a) ("[A] borough may levy and collect a sales tax on sales, rents, and on services provided in the borough."); *see also Stevens v. Matanuska–Susitna Borough,* 146 P.3d 3, 7 (Alaska App.2006) ("All municipalities, including second-class boroughs, have general powers to, among other things, establish salaries for municipal employees, levy taxes, enforce ordinances, and acquire and dispose of property."); *Bookey,* 618 P.2d at 568 (Alaska 1980) ("Boroughs and cities may levy and collect a sales tax."). In fact, this power is arguably "mandatory" for boroughs pursuant to AS 29.35.170. *See* AS 29.35.170(a) ("A borough shall assess and collect property, sales, and use taxes that are levied in its boundaries, subject to AS 29.45.").

And this court has referred to a municipality's "right" to tax in at least two prior cases. *See Cool Homes, Inc. v. Fairbanks N. Star Borough,* 860 P.2d 1248, 1253 (Alaska 1993); *Alascom, Inc. v. N. Slope Borough, Bd. of Equalization,* 659 P.2d 1175, 1180 (Alaska 1983).

California considered a similar issue in *AB Cellular LA, LLC v. City of Los Angeles.*[FN22] The California court of appeals considered AB Cellular's contention that the City was required to submit an increased cell phone tax to voters for approval pursuant to a proposition giving voters the right to approve any increase of local tax before it goes into effect.[FN23] The language of that proposition stated in part that "[n]o local government

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may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote." FN24 Initially, the court noted that a tax is not deemed "increased" under California's statutory definition if it "[i]mplements or collects a previously approved tax, ... so long as the rate is not increased beyond the level previously approved." FN25 The California court then explained: "[A] local taxing entity can enforce less of a local tax than is due under a voter-approved methodology, or a grandfathered methodology, and later enforce the full amount of the local tax due under that methodology without transgressing [the voter approval proposition].... The evil to be counteracted is the increase of local ***1136** taxes beyond what was formerly approved." FN26

FN22. 150 Cal.App.4th 747, 59 Cal.Rptr.3d 295 (Cal.App.2007).

FN23. *Id.* at 752–53, 59 Cal.Rptr.3d 295.

FN24. *Id.* at 760, 59 Cal.Rptr.3d 295.

FN25. *Id.*

FN26. *Id.* at 763–64, 59 Cal.Rptr.3d 295.

We agree with the California court's reasoning in *AB Cellular.* The Borough voters expressly authorized the Borough to enact a sales tax of up to three percent, and the savings clause at AS 29.45.670 preserved the Borough's right to do so. Although the Borough subsequently reduced the tax rate to two percent, it did not need to seek further voter ratification to raise the tax rate to the amount approved by voters in 1964.FN27

FN27. Because the 1964 authorization gave the Borough the authority to set the sales tax rate at up to three percent without need for further ratification, we do not need to reach the question of the 2006 defeat of the referendum to repeal Ordinance 9. But we note that voters rejected the referendum on Ordinance 9's repeal. The voter's pamphlet states that if the referendum failed, "a 3 percent sales tax would become effective," so the voters' rejection of the referendum was an approval of the three-percent tax.

B. Requiring Prior Voter Approval For All Capital Projects With A Cost Of Over $1 Million Is An Impermissible Appropriation.

Proposition 4 required prior voter approval for Borough capital projects with a total cost of more than $1 million. It was approved by Borough voters in 2005. As it appeared codified at KPB 05.04.110 (2005), it provided:

(A.) All capital improvement projects to be constructed or acquired by the borough must be approved by the voters of the borough at a regular or special election, before the project is constructed or acquired if the total project cost is more than $1,000,000, including architectural, engineering, inspection, design, administration or any other cost....

(B.) When the total projected cost of a capital improvement project as defined in this section is more than $1,000,000 it must receive an affirmative vote by no less than 60 percent of the affected voters voting at a borough election for such a project to be approved.

The question presented here is whether Proposition 4 is an appropriation and therefore an impermissible initiative. Alaska Statute 29.26.100 grants the power of lawmaking by initiative on the local level to municipal residents. But the statute also restricts the initiative power, directing that "[t]he powers of initiative and referendum

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... do not extend to matters restricted by art. XI, § 7 of the state constitution." Article XI, section 7 of the Alaska Constitution, in turn, states that "[t]he initiative shall not be used to dedicate revenues, [or to] make or repeal appropriations."

The superior court found that Proposition 4 was invalid because a voter approval requirement would "restrict the budget and capital program appropriation power vested by the Legislature in the assembly," and that in light of the constitutional restrictions on the initiative power "[i]mposing a prior voting resident [approval] threshold by initiative would improperly restrict the power of the assembly to make appropriations." ACT argues that the ordinance does not violate article XI, section 7 of the Alaska Constitution because it does not explicitly make or repeal an appropriation. ACT distinguishes Proposition 4 from other initiatives "whose primary object is to require the outflow of government assets" because it "does not dispose of public assets nor does it involve the making of an appropriation of public assets."

ACT argues that we have narrowly construed the constitutional prohibition on initiatives making or repealing an appropriation. The Borough contends that we have read the prohibition more broadly, to reach any initiative that restricts the government's authority to "allocate funds between competing needs," thereby "arrest[ing] the assembly's control over the budget."

[10][11] While the term "appropriation" is not defined in the statute or in the Alaska Constitution, we have held that an initiative "proposes to make an appropriation if it 'would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action.' " [FN28] We have described***1137** in detail the two-part inquiry to determine whether a particular initiative is an improper appropriation. First, "we determine whether the initiative deals with a public asset." [FN29] There is no question that the municipal funds involved are public assets; no item is more clearly a public asset than public revenue.[FN30]

FN28. *Alaska Action Ctr., Inc. v. Municipality of Anchorage,* 84 P.3d 989, 993 (Alaska 2004) (quoting *City of Fairbanks v. Fairbanks Convention & Visitors Bureau,* 818 P.2d 1153, 1157 (Alaska 1991)); *see also Fairbanks Convention & Visitors Bureau,* 818 P.2d at 1156–57 (noting that "appropriation" may be defined more narrowly when considering whether an initiative or referendum repeals an appropriation than when it makes an appropriation).

FN29. *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage,* 151 P.3d 418, 422 (Alaska 2006).

FN30. *See, e.g., Thomas v. Rosen,* 569 P.2d 793, 796 (Alaska 1977) (defining "appropriation" as involving setting aside "public revenue").

Second, "we determine whether the initiative would appropriate [the public] asset," which involves looking to the "two core objectives" of the constitutional limitation.[FN31] The first objective is to prevent " 'give-away programs' that appeal to the self-interest of voters and endanger the state treasury" by allowing "rash, discriminatory, and irresponsible" appropriations.[FN32] The second, related objective is to "preserv[e] legislative discretion by ensuring that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs." [FN33]

FN31. *Anchorage Citizens for Taxi Reform,* 151 P.3d at 423.

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FN32. *Id.* (internal quotation marks omitted).

FN33. *Id.* at 423 (internal quotation marks omitted) (emphasis in original).

This second core objective was recognized in our decision in *McAlpine v. University of Alaska.*[FN34] The initiative in *McAlpine* dictated the creation of a community college system separate from the University of Alaska and required the university to transfer a specified amount of property to the community college system. [FN35] We held that the initiative was impermissible not because it was a "give-away" of resources but because it "designate[d] the use of" state assets.[FN36]

FN34. 762 P.2d 81 (Alaska 1988).

FN35. *Id.* at 87–88.

FN36. *Id.* at 89.

We have since clarified that the constitutional restriction on the initiative power is meant to retain the legislature's control of the "process" of making appropriations.[FN37] We held that an initiative is unconstitutional when it causes the voters to "essentially usurp the legislature's resource allocation role." [FN38] Finally, we recently explained that the "primary question" in assessing the second core objective "is whether the initiative narrows the legislature's range of freedom to make allocation decisions in a manner sufficient to render the initiative an appropriation." [FN39] This case presents the question whether an initiative may run afoul of the core objectives underlying the initiative restrictions when it allocates public assets *away from* a particular purpose. We hold that it can.

FN37. *Staudenmaier v. Municipality of Anchorage,* 139 P.3d 1259, 1263 (Alaska 2006) (quoting *City of Fairbanks v. Fairbanks Convention & Visitors Bureau,* 818 P.2d 1153, 1156 (Alaska 1991)).

FN38. *Id.*

FN39. *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell,* 215 P.3d 1064, 1075 (Alaska 2009) (citing *Pullen v. Ulmer,* 923 P.2d 54, 64 n. 15 (Alaska 1996)).

We conclude that Proposition 4 sufficiently narrows the Borough's ability to make allocation decisions to render it an appropriation. ACT relies heavily on our decision in *City of Fairbanks v. Fairbanks Convention & Visitors Bureau.* [FN40] There, we upheld an initiative that repealed a city code designating a certain portion of bed tax revenues for purposes of tourism development, and instead deposited the revenues in a discretionary fund. [FN41] We reasoned that the initiative did not reduce the city council's control over the appropriations process but rather *increased* its discretion in appropriating funds.[FN42] In ***1138** addition, we explained that a measure was not an appropriation where it did "not reflect an action taken by the governing body after annual approval of the budget." [FN43] ACT argues that there is no prohibition against allowing voters to approve a major project in advance of the budget approval.

FN40. 818 P.2d 1153 (Alaska 1991).

FN41. *Id.* at 1154–55.

FN42. *Id.* at 1157–58.

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FN43. *Id.* at 1157.

Referring capital projects to voters, however, will almost invariably result in voters "vetoing" certain projects, at which point there is nothing the Borough can do to go forward with the project. In ACT's view this means that the municipal funds are still available to be used at the Borough's discretion. But the voters' ability to veto a capital project, even prior to budget approval, infringes on the assembly's ability to allocate resources among competing uses because there is nothing that the assembly can do to appropriate money for that project.

In *Pullen v. Ulmer,* we struck down an initiative that established a salmon harvest priority system as contravening both of the "core objectives" of the constitutional provision because it would lead to the "very real possibility that [some groups] will be excluded" from using the resource.[FN44] Under our decision in *Pullen,* an initiative may make an impermissible appropriation not only when it designates public assets for some particular use, but also when it allocates those assets *away from* a particular group or purpose.[FN45] Proposition 4 dictates the same result, although in a less direct fashion: While the ordinance itself does not allocate public assets, it requires that voters be permitted to allocate those resources. Practically, when voters refuse to approve a capital project they allocate municipal funds away from the particular project, which interferes with the Borough's exclusive power to allocate funds among competing uses. Proposition 4 thus violates the underlying purposes of the constitutional restrictions on municipal citizens' initiative power.[FN46]

FN44. 923 P.2d at 64.

FN45. *See also* 2 Proceedings of the Alaska Constitutional Convention (PACC) 941 (Dec. 16, 1955) (discussing that the initiative should not be used to "try[ ] to nullify" "functions of the government that have to be carried on ... by cutting off appropriations for them").

FN46. The superior court also determined on summary judgment that the 60% supermajority voter approval requirement of Proposition 4 could not be imposed by initiative. ACT did not identify this issue in its points on appeal, its statement of issues presented, or its discussion in its opening brief. ACT has therefore waived the issue. *See Gunderson v. Univ. of Alaska, Fairbanks,* 902 P.2d 323, 327 n. 5 (Alaska 1995) (holding that issue not included in points on appeal is waived). Moreover, it appears that KPB 05.04.110 was recently amended with the supermajority provision deleted.

C. ACT Does Not Fall Under The AS 09.60.010(c)(2) Attorney's Fee Exception For Constitutional Litig- ants.

Alaska Statute 09.60.010(c)(2) provides that "[i]n a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the [Alaska] Constitution," a litigant "may not [be ordered] to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff ... did not prevail in asserting the right." [FN47] The superior court determined that AS 09.60.010(c)(2) "preclude[d] a fee award in favor of [the Borough] against ACT on the capital spending issues."

FN47. This second provision is the corollary to section (c)(1), which provides that full reasonable attorney's fees and costs shall be awarded to a "claimant, who, as plaintiff ... has prevailed in asserting the right."

[12] The Borough argues in its cross-appeal that ACT is not entitled to statutory protection from an attorney's fee award for at least three reasons: (1) the case did not involve the "protection of the right to enact local

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laws by initiative" because the initiative was, in fact, placed on the ballot and later challenged as contrary to statute; (2) the initiative was local and thus based on statutory authority rather than the federal or state constitutions; and (3) any constitutional concepts implicated in the case were "collateral at best" and so ACT did not actually prevail on a constitutional claim. ACT counters that the superior court's decision was correct because the Alaska Constitution protects the ***1139** municipal initiative power and the capital project approval issue did concern constitutional rights. ACT also asks this court to conclude that "[a]ll municipal initiative cases should be treated as ... arising under the Constitution of Alaska."

[13] We will construe a statute "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." [FN48] The text of AS 09.60.010(c)(2) provides that the protection against attorney's fees only applies if the action "concern[ed] the establishment, protection, or enforcement of a [constitutional] right." [FN49] Thus, the correct inquiry is whether this case concerned a constitutional right. The only right at issue here was the right of municipal citizens to legislate by initiative. We have definitively concluded that the local initiative power is statutory rather than constitutional.[FN50] In *Griswold v. City of Homer,* we determined that "because the initiative was local, and not statewide, the power to initiate ... was directly derived from AS 29.26.100," not the Alaska Constitution.[FN51] And in *Carmony v. McKechnie,* we again addressed the origins of the municipal initiative power in the context of a public interest litigant. We held that the plaintiff seeking review of a municipal ballot initiative did not qualify as a public interest litigant.[FN52] Citing *Griswold,* we explained that because the case "did not involve a constitutional claim, but rather concerned the statutory power of the local initiative," the plaintiff "could not be protected by AS 09.60.010(c)(2) from an award of attorney's fees." [FN53]

FN48. 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 46:6, at 231–42 (7th ed.2007).

FN49. AS 09.60.010(c).

FN50. *Carmony v. McKechnie,* 217 P.3d 818 (Alaska 2009); *Griswold v. City of Homer,* 186 P.3d 558 (Alaska 2008).

FN51. *Griswold,* 186 P.3d at 563.

FN52. *Carmony,* 217 P.3d at 823–24.

FN53. *Id.* at 824.

We reaffirm our earlier rulings that the local initiative power is statutory in origin. Article X of the Alaska Constitution, which **concerns** local government, does not discuss the initiative and referendum power. Article XI, which **concerns** initiative powers, does not expressly reserve a local initiative right. Delegates to the Constitutional Convention did not indicate that article XI was intended to preserve a local initiative power. Two delegates did discuss a local initiative power, but their exchange implied that local governments could include in the charter the referendum power or not, as they chose. As delegate Victor Fischer stated, "When [the people of a borough] adopt a charter, they will get together, just as we're doing here, and write the constitution or charter for that borough. And they can put in referendum or they can leave them out." [FN54] Had the delegates thought the constitution guaranteed a local initiative right, it would not have been necessary to discuss local choice.

FN54. 4 PACC 2677 (Jan. 19, 1956).

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Here, the constitutional limitations on the statutory right for local citizens to legislate by initiative are still incorporated into and imposed by AS 29.26.100, even though an analysis of the limitations necessitates an analysis of constitutional case law. We therefore hold that ACT did not raise issues concerning the establishment, protection, or enforcement of a right under the Alaska Constitution and therefore is not entitled to protection from an attorney's fee award under AS 09.60.010(c)(2).

V. CONCLUSION

For the foregoing reasons, we AFFIRM the decision of the superior court with respect to the grants of summary judgment in favor of the Borough on the merits of Ordinance 9 and Proposition 4. We REVERSE the superior court's determination that ACT qualifies as a constitutional litigant under AS 09.60.010.

CHRISTEN, Justice, not participating.

Alaska,2012.
Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough
273 P.3d 1128

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CITY AND BOROUGH OF SITKA

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Legislation Details

File #:	ORD 12-30	**Version:**	1	**Name:**	
Type:	Ordinance			**Status:**	PASSED
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/26/2012
Title:	Adding a new Chapter 4.44 to the SGC Establishing Required Levels of Cash to be Maintained and a new Chapter 4.45 to the SGC Establishing a Long Term Infrastructure Sinking Fund for the Repair and Replacement of General Fund Municipal Infrastructure, Streets, Sidewalks, Parking Lots and Parks				
Sponsors:	Peter Esquiro, Mike Reif				
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Date	Ver.	Action By	Action	Result
9/26/2012	1	City and Borough Assembly		
9/25/2012	1	City and Borough Assembly		
9/11/2012	1	City and Borough Assembly	AMENDED	Fail
9/11/2012	1	City and Borough Assembly	PASSED ON FIRST READING	Pass

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CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-30

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA.ALASKA ADDING A NEW CHAPTER 4.44 TO THE SITKA GENERAL CODE ESTABLISHING REQUIRED LEVELS OF CASH TO BE MAINTAINED AND A NEW CHAPTER 4.45 TO THE SITKA GENERAL CODE ESTABLISHING A LONG TERM PUBLIC INFRASTRUCTURE SINKING FUND FOR THE OF REPAIR AND REPLACEMENT OF MUNICIPAL BUILDINGS, STREETS, SIDEWALKS, AND PARKING LOTS

BE IT ENACTED by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** The purposes of this ordinance are to codify requirements to maintain minimum levels of cash within the General Fund, and, to establish a sinking fund for the repair and replacement of municipal buildings, streets, sidewalks, and parking lots, and its subsequent use for such restricted purposes.

4. **ENACTMENT.** The Assembly of the City and Borough of Sitka hereby adds Chapter 4.44 and 4.45 to the Sitka General Code.

Chapter 4.44
REQUIRED LEVELS OF CASH TO BE MAINTAINED IN THE GENERAL FUND

* * *

4.44.01 Required Levels of Cash On Hand. The General Fund of the City and Borough of Sitka shall be required to maintain a minimum level of cash and cash equivalents in order to provide for adequate cash flow management and liquidity for the Municipality.

A. The minimum level of cash and cash equivalents to be maintained shall be equal to the total of all budgeted expenditure for the General Fund for the current fiscal year, divided by 4. Transfers from the General Fund balance shall not be considered expenditure for the purposes of this calculation.

B. For purposes of this Chapter, cash and cash equivalents shall be defined as cash held in demand deposits, overnight repurchase agreements as defined by SGC 4.28.060 4, money market mutual funds as defined by SGC 4.28.060 5, certificates of deposit as defined by SGC 4.28.060 2, and local government investment pools per SGC 4.28.060 6.

4.44.02 Restriction of General Fund Balance. A portion of the General Fund balance equal to the total of all budgeted expenditures for the General Fund for the current fiscal year, divided by 4, (transfers from the General Fund balance shall not be considered expenditure for the purposes of this calculation), shall be restricted as to its use in order to provide for required liquidity of the Municipality and not available for appropriation without a super majority of the Assembly voting in approval. An additional amount of $2,000,000 shall be restricted as to its use in order to provide funds for responding to an emergency and not available for appropriation without a super majority of the Assembly voting in approval.

Chapter 4.45

LONG TERM INFRASTRUCTURE SINKING FUND FOR THE REPAIR AND REPLACEMENT OF MUNICIPAL BUILDINGS, STREETS, SIDEWALKS, AND PARKING LOTS

* * *

4.45.01 Establishment of the Public Infrastructure Sinking Fund. There shall hereby be created, within the fund structure of the City and Borough of Sitka, a sinking fund for the repair and replacement of municipal buildings, streets, sidewalks, and parking lots, to be hereafter called the Public Infrastructure Sinking Fund.

4.45.02 Determination of the Required Balance of the Public Infrastructure Sinking Fund. Within 90 days after the start of each fiscal year, the Administrator shall prepare an analysis of the General Fund Balance with an accompanying recommendation as to an amount of the General Fund Balance available for potential transfer to the Public Infrastructure Sinking Fund. This analysis shall first take into account any portions of the General Fund restricted by Section 4.44 of the Sitka General Code before recommending any further amounts for potential transfer to the Public Infrastructure Sinking Fund.

4.45.03 Assembly Action. Within 60 days after presentation of the annual analysis by the Administrator, the amount determined by the Administrator shall automatically be transferred to the Public Infrastructure Sinking Fund, unless a super majority of the Assembly votes to change the recommended amount.

4.45.04 Use of the Sinking Fund. The Assembly shall annually appropriate an amount from the Public Infrastructure Sinking Fund to be used exclusively for the repair and replacement of municipal buildings, streets, sidewalks, and parking lots, as recommended by the Administrator in his annual budget.

4.45.05 Emergency Transfer of the Sinking Fund. The Assembly shall have the authority to transfer any portion of the Public Infrastructure Sinking Fund to the General Fund in the case of an emergency threatening public health, safety, or welfare which requires use of public funds. Such a transfer shall require an approval of a super majority of the Assembly.

EFFECTIVE DATE. This ordinance shall become effective the day after the date of passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 9th day of October, 2012.

_____

Cheryl Westover, Mayor

ATTEST:

_____

Colleen Ingman, MMC
Municipal Clerk

1st Reading September 11 Amended
2nd Reading September 25 Amended version
3rd Reading October 9

previous comments. She urged the need to expand marketing to Sitka. Gerry Hope spoke on behalf of Alaska Native Brotherhood Building, which was also in high demand and had a similar situation - how to get enough revenue to stay in operation. They found when they charged the dance groups that they used the facility less. Annette Becker, Sitka Youth Advocates, used it around 20 times last year primarily for training and greatly appreciated it. Sabra Jenkins, Oceanwave Quilters, noted the group was planning their 30th Anniversary and wondered if it would be their last show. Pat Alexander spoke to the unintended consequences; this could cause less revenue. Pat Kehoe mentioned the number of organizations that use HCH and that it was a part of the heart of Sitka. Kehoe noted the City needed to do what they could to keep downtown vital and the Centennial Building was a big part of that. Fire Chief Dave Miller informed the Alaska State Firefighters used the building for free but brought in 300 people and a fair amount of money. He noted the EMS Symposium was also held at HCH every other year. He stated locals were able to attend for free. With 80 volunteers to train, it would mean additional travel dollars. He advocated for doubling the size of HCH. Alicia Olsen of the Sitka Seafood Festival relayed they had contracts out with the Food Network and Travel Channel. There was potential to grow in this arena. Ryan Kauffman emphasized the importance of the building to the community. He spoke against the fee change. Linda Wilson spoke to the quality of life in Sitka and the events held at HCH. Ron Field understood both sides; when people used the building to make a profit they should pay. Many of those testifying thanked and complimented the HCH staff for their work.

Assembly Deliberation:
In response to a question by Reif, Kluting estimated $44,000 in additional revenue would be generated from the rate changes. Kluting believed the nonprofits would go elsewhere thereby reducing the estimated increase by half. Reif was willing to continue looking at the extended hours portion but not the rate increase. Christianson believed the rate changes would result in a loss of funds. He reminded of the economic activity that was generated from the building; there would not be enough money to make a differenc eto the City, but enough to make a difference to the users. McConnell, involved in many non-profits, did not favor changing the rate system but would be willing to discuss hours. Westover and Hackett wished to discuss the hours of operation. She asked for the Administrator's assistance in placing a survey on the City website regarding HCH hours. Esquiro hoped to get some recommendations on how to reduce the cost of operation for the building. He challenged citizens to come up with solutions.

X. NEW BUSINESS:

New Business First Reading

G **ORD 12-06** Amending the Sitka General Code by repealing the sales tax exemption provision currently at Sitka General Code subsection 4.09.100Y for "exemption for retired persons who have reached the age of sixty-five," and adding a new section 4.09.105 entitled "Sales Tax Exemption for Sitka Senior Residents or Members of their households"

Mayor Westover asked Administrator Dinley to explain the comment that former Finance Director Dave Wolff made at the last meeting with regard to the amount of money in reserves. Dinley explained the City had roughly $9.7 m which the City had set aside for emergencies. The amount did not take into consideration scheduled accounts payable or future commitments that would be invoiced. He also reminded the City had no dedicated funding set aside for all of its infrastructure. For example; the City thought they had a healthy sinking fund for vehicles and learned they only had 40% of what they thought they had.

The motion PASSED by the following vote.

Yes: 6 - Westover, McConnell, Blake, Christianson, Reif, and Hackett

A motion was made by Westover to RECONVENE as the Assembly in regular session. The motion PASSED by a unanimous vote.

H 12-70 Approve a Memorandum of Agreement with the Alliance for the Support of American Legion Baseball in Alaska authorizing them to complete the Moller Field project and to utilize CBS remaining State Grant funds for Moller Baseball Field improvements

Brian Hansen urged the Assembly to support this.

Public Works Director, Michael Harmon, noted the City spent around $10,000 a year maintaining the existing field. The proposed field has a long life expectancy. Harmon stressed the need to create an infrastructure maintenance/replacement fund noting Sitka had a false sustainable economy with heavy dependence on State funding.

A motion was made by Reif that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 6 - Westover, McConnell, Blake, Christianson, Reif, and Hackett

I 12-68 Approval of Contract Assistant for the Blue Lake Expansion Project - Electric Department

This item was PULLED prior to the meeting.

J 12-62 Approve a permanent transfer of CBS Property Lot 18 Sawmill Cove Industrial Park to the Water Enterprise Fund including a transfer of $65,560.00 from the UV Facility Capital Account to SMCIP Fund

Sawmill Cove Industrial Park Director, Garry White, explained the City was looking for a piece of property to put their UV Plant on and approached the Sawmill Cove Board. The Water Enterprise would be investing in this property.

A motion was made by McConnell that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 6 - Westover, McConnell, Blake, Christianson, Reif, and Hackett

K 12-65 Approve a Memorandum of Agreement between DOT&PF and CBS for the Sawmill Cove Waterfront Development Plan and Project Scope

Christianson had to sign off from the meeting at 8:40 PM to address other matters.

Garry White, Sawmill Cove Industrial Park Director, explained CBS was awarded federal funds for the development of waterfront of Sawmill Cove. The study would identify six main projects at the Park: 1) the viability for a larger marine haul out; 2) the ability to tender larger commercial vessels; 3) what type of dock the Park would support; 4) a site assessment of the water structure; 5) a bathometric rocking of the bottom; and 6) whether a rock quarry could be operated safely.

A motion was made by Blake that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 3 - Westover, Reif, and Hackett

The amendment PASSED by the following vote:

Yes: 6 - McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

No: 1 - Westover

McConnell hoped to see the public educated on the sales tax exemption rules. Christianson noted the main mode of enforcement would be citizens.

A motion was made by Reif to further amend the ordinance by striking all references to publicizing. The motion to amend PASSED by the following vote:

Yes: 6 - Westover, McConnell, Blake, Esquiro, Reif, and Hackett

No: 1 - Christianson

A motion was made by Christianson to amend line 49 of the ordinance from less than twice the federal poverty guidelines to three times the federal poverty guidelines. The amendment PASSED by the following vote:

Yes: 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

A recess was taken from 8:22pm to 8:31pm.

The Assembly discussed the ordinance and guidelines for implementation.

A motion was made by Christianson that this Ordinance be PASSED ON FIRST READING AS AMENDED. The motion PASSED by the following vote.

Yes: 5 - McConnell, Blake, Christianson, Reif, and Hackett

No: 2 - Westover, and Esquiro

C ORD 12-17 Adopting Budgets for the Fiscal Year July 1, 2012 through June 30, 2013

McConnell wondered about raising fees for vehicles and how that would help create funds for road infrastructure. She also noted it was crucial to determine funding for the sinking fund. Reif agreed. He expressed the need for growth of the sinking fund.

A motion was made by McConnell that this Ordinance be PASSED ON FIRST READING AS AMENDED. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

VII. PERSONS TO BE HEARD:

None.

VIII. EXECUTIVE SESSION

None.

X. ADJOURNMENT

A motion was made by McConnell that this Ordinance be POSTPONED at the request of Mayor Westover seeing that there were only five members in attendance. The motion PASSED by the following vote.

Yes: 4 - Westover, McConnell, Christianson, and Reif

No: 1 - Esquiro

Absent: 2 - Blake, and Hackett

A ORD 12-07S Amending the Sales Tax Exemption at Sitka General Code Subsection 4.09.100N entitled "Over One Thousand Dollars in Sales and Rents of Tangible Personal Property and on Sales of Services," and "Over One Thousand Dollars in Rent or Lease of Real Property on a Monthly Basis."

Sweeney strongly urged from a staff viewpoint and for the ease of the public in completing their sales tax returns that the month be changed. His staff is unanimous in favoring an October vs. September effective date. Reif suggested having a September date would be burdensome for the retailers and the finance department. The budget is currently balanced; and he hopes this additional revenue will go towards an infrastructure sinking fund. We also need to take into consideration that there are still adventure travelers in the month of September.

A motion was made by Reif that this Ordinance be AMENDED. The motion PASSED by the following vote.

Yes: 5 - Westover, McConnell, Christianson, Esquiro, and Reif

Absent: 2 - Blake, and Hackett

This item was PASSED ON FIRST READING.

B ORD 12-06A Amending the Sitka General Code by repealing the Sales Tax Exemption provision currently at Sitka General Code Subsection 4.09.100Y for "Exemption for Retired Persons Who Have Reached the Age of Sixty-Five," and adding a new section 4.09.105 entitled "Sales Tax Exemption for Sitka, Senior Residents."

The mayor doesn't favor tripling the means or having two different ages; she just feels we have complicated it.

Sweeney projects $200,000 in today's dollars plus or minus $50,000 in twenty years. He said they certainly would have additional record keeping administration surrounding the photo ID cards. His estimate is it will double the amount of time the application process takes. McConnell mentioned some of the emails she received with regard to exempting food and utilities as perhaps a better route. McConnell asked Hillhouse her thoughts on going this route. Hillhouse talked to the state assessor and he said no one does food other than food stamps; she couldn't find a definition of food in Alaska.

support the budget process starting earlier. Christianson believes we will have a supplemental budget ordinance next month for consideration and urged members to consolidate their desires into one ordinance if possible.

A motion was made by Hackett that this Ordinance be PASSED ON SECOND AND FINAL READING AS AMENDED. The motion PASSED by the following vote.

Yes: 5 - Westover, McConnell, Blake, Christianson, and Reif

No: 2 - Esquiro, and Hackett

F ORD 12-07S Amending the Sales Tax Exemption at Sitka General Code Subsection 4.09.100N entitled "Over One Thousand Dollars in Sales and Rents of Tangible Personal Property and on Sales of Services," and "Over One Thousand Dollars in Rent or Lease of Real Property on a Monthly Basis."

Sweeney projected the revenue for a nine month period to be roughly $500,000 however, he clarified that it is a speculative guess. Reif hopes the additional funds will go into a maintenance/infrastructure "Sinking Fund." Westover cautioned; until we see how it plays out we really have no idea what we will collect.

A motion was made by McConnell that this Ordinance be PASSED ON FIRST READING AS PREVIOUSLY AMENDED. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

I 12-85 Authorize the Administrator to execute an agreement for Contract No. 3 - Supply of Gates and Hoist for the Blue Lake Expansion Project to Linita Design and Manufacturing Corporation - not to exceed $817,690.00

A motion was made by Hackett that this Item be APPROVED. The motion PASSED by the following vote.

Yes: 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

K 12-81 Approve the award and design contract for Centennial Hall Renovations to McCool Carson Green Architects with a not to exceed amount of $1,217,763

Esquiro brought up the money the city spends on planning and design. It is a costly piece that warrants careful consideration. Mayor has shared some of the same concerns; yet realizes the need to get it right the first time. Harmon informed that the industry standards for percentages are: 7-10% for raw design with no public process. Blatchley Middle School is a good example of that. You add in the public process and it bumps the costs up to 15%, and if you have extensive permitting it goes to 15-18%, sometimes even higher.

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-121	**Version:**	1	**Name:**	
Type:	Contract/Agreement			**Status:**	PASSED
File created:	9/4/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012

Title: Authorize the Municipal Administrator to issue Barnard Construction Company Inc. a Notice of Award and enter into an agreement for Contract No. 9, General Construction and obligate project funds in the amount of $96,694,300 from the Blue Lake Third Turbine and Dam Upgrade Capital Project No. 90594

Sponsors:

Indexes:

Code sections:

Attachments: Memo Blue Lake Expansion Contract 9

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	APPROVED	Pass
9/11/2012	1	City and Borough Assembly	APPROVED	Pass
9/11/2012	1	City and Borough Assembly	APPROVED	Pass

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City & Borough of Sitka
Electric Department
105 Jarvis Street, Sitka AK. 99835
Telephone: 907-747-4000 Fax: 907-747-3208

Memorandum

September 5, 2012

To: Jim Dinley, Municipal Administrator
From: Christopher Brewton, Utility Director, Electric Department
Subject: **Blue Lake Hydroelectric Expansion Project- Award of Contract No. 9 – General Construction**

Request:

I request Assembly approval authorizing the City Administrator to issue Barnard Construction a Notice of Award, to clarify and confirm a final price, and to enter into an agreement for Contract No. 9, General Construction for the Blue Lake Expansion Project. The maximum amount of this contract would be the bid amount of $92,975,300. In addition, I request the Assembly approve a 4% contingency of $3,719,000, bringing the total requested amount to $96,694,300.

Background:

The City and Borough of Sitka advertised for the Blue Lake Expansion Project General Construction Contract on May 1, 2012. Prospective bidders showed considerable interest in the project, with more than 50 individuals attending the project pre-bid conference on May 22 and 23.

Four bids were received at the bid opening on July 31, 2012. The bid results as received on July 31 are as follows:

Company	Base Bid Amount	Comments
ASI Constructors, Inc.	$84,231,085	Responsive Bidder
Barnard Construction Co, Inc.	$92,975,300	Responsive Bidder
Kiewit Infrastructure West Co	$101,181,850	Responsive Bidder
PCL Construction	Non Responsive	No bid price form was submitted

Evaluation of Bids:

The bids were reviewed by Department staff and its consultants. The review process was described in detail in the City Assembly Update document discussed with the Assembly at the September 10th work session.

In general a four step process was used to evaluate the proposals consisting of:

1. Individual evaluations by each review team member,
2. Team evaluation of the bids,
3. Summarizing the findings and recommending award, and
4. Notifying the Bidders of the results.

1. Based on our findings from utilizing the above four step process the Best Evaluated Bidder is Barnard Construction Company, Inc.

The anticipated contract amount will be:

Project Construction (contract amount)	$92,975,300
Contingency (held by the City for change items)	$3,719,000*
Total	**$96,694,300**

*The contingency amount is lower than what we would normally recommend. With Assembly approval, we would increase this number if needed at the time of the second bond issuance.

Funding:

Additional funding of $71 Million will need to be secured to award the Contract.

Following research by our Bonding Consultant, A. Dashen & Associates and communications with the Alaska Municipal Bond Bank Authority (AMBBA) and its Bond Counsel, we have identified three possible funding scenarios as follows:

Scenario 1 - $18 million added state grant, future rate increases allowed for the "Bond Test".
Scenario 2 – No added state grant, future rate increases allowed for the "Bond Test".
Scenario 3 – No added state grant, no future rate increases allowed for the "Bond Test".

Scenario 3 is the most onerous alternative which assumes no added State support and requires that all needed electric rate increases are in place at the time of the various bond sales. City staff are pursuing added State funding which, if obtained at the 50% matching rate, would be $18 million. Also staff is investigating, with the help of bonding consultants and the AMBBA, opportunities for different bond sale programs which would allow a series of bond sales and a sequence in electric rate increases.

The impact on Sitka's electric rates for each of these scenarios are described in the following:

Impacts on Electric Rates in Sitka:

Scenario 1 - Bond sales with $18 million added state funding and future rate increases allowable.

Fiscal Year	Rate required to meet bond test
2012	$0.098/kWh (old rate prior to Sept. 2012 rate increase)
2013	$0.11/kWh (current average rate following Sept 2012 rate increase)
2014	$0.124/ kWh
2015	$0.132/ kWh
2016	$0.142/ kWh
2017	$0.147/ kWh

Scenario 2 - Bond sales with no additional state funding and future rate increases allowable.

Fiscal Year	Rate required to meet bond test
2012	$0.098/kWh (old rate prior to Sept. 2012 rate increase)
2013	$0.124/kWh
2014	$0.138/ kWh
2015	$0.153/ kWh
2016	$0.158/ kWh

Scenario 3 - Bond sales with no additional state funding and no future rate increases allowable.

Fiscal Year	Rate required to meet additional bond test
2012	$0.098/kWh (old rate prior to Sept. 2012 rate increase)
2013	$0.124/kWh
2014	$0.137/ kWh
2015	$0.150/ kWh
2016	$0.155/ kWh
2017	$0.158/ kWh

In the worst case scenario our electric rates would rise to $0.158/kWh in 2017. This assumes no added state funding, no reductions in cost for the project (through negotiations with the selected contractor), and no increase in energy sales within the City's electric system. Any of these additions in funding, energy sales, or cost reductions would reduce the electric rates indicated above. It is recommended that the City proceed with procuring financing based on the worst case, Scenario 3, because this is the best alternative available at this time. Additional state funding will be pursued to reduce this amount.

Alternatives to Contract Award:

As will be reviewed with the Assembly in the September 10 work session, Electric Department staff and our Construction Management consultant believe that cancellation of the project would be economically the worst choice for the City of Sitka.

We also are convinced that rejecting bids and re-bidding the project would lead to overall project costs greater than what we are faced with, combined with at least a one-year delay in the project.

Recommendation:

I recommend the Assembly authorize the Municipal Administrator to issue to Barnard Construction Company, Inc. a Notice of Award, clarify and confirm a final price, and enter into an agreement for Contract No. 9, General Construction for the Blue Lake Expansion Project. The maximum amount of this contract would be the bid amount of $92,975,300. In addition, I recommend the Assembly approve a 4% contingency bringing the total requested project cost to $96,694,300. We will keep the Assembly informed on the status of the project.

Proposed Motion:

I MOVE to authorize the Municipal Administrator to issue Barnard a Notice of Award and enter into an agreement for Contract No. 9, General Construction and obligate project funds in the amount of $96,694,300 from the Blue Lake Third Turbine and Dam Upgrade Capital Project No. 90594: and execute this action on behalf of the Assembly of the City & Borough of Sitka.

Cc: Jay Sweeney, Finance Director
Dean Orbison, Blue Lake Project Manager

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-124	**Version:**	1	**Name:**	
Type:	Contract/Agreement			**Status:**	PASSED
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/12/2012
Title:	Approve a lease with Aggregate Construction, Inc. for Lots 6 & 7 of Sawmill Cove Industrial Park as recommended and approved by the Sawmill Cove Board of Directors				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Aggregate Construction Lease Aggregate Construction Lease 2				

Date	Ver.	Action By	Action	Result
9/12/2012	1	City and Borough Assembly	APPROVED	Pass

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Sawmill Cove
INDUSTRIAL PARK
329 Harbor Dr. Suite 212, Sitka, AK 99835 907-747-2660

Thursday, August 30, 2012

MEMORANDUM

To: Jim Dinley, CBS Administrator

From: Garry White, Director

Subject: Aggregate Construction, Inc. Lease Request

Introduction

The Sawmill Cove Industrial Park (SCIP) Board of Directors recommends approval of a lease for space at the SCIP as requested by Aggregate Construction, Inc and approved by the SCIP Board at their meeting of August 27, 2012.

Background

Aggregate Construction, Inc (ACI), a local construction and paving company, is requesting to lease Lots 6 and 7 of the SCIP for a minimum of one year for equipment and materials storage, and for an asphalt plant.

Additional Information

- Lot 6 is 41,028 SF. The SCIP Board has set the yearly rate at $0.36/SF/YR. Annual lease income will be $14,770.08
- Lot 7 is 32,879 SF. The SCIP Board has set the yearly rate at $0.36/SF/YR. Annual lease income will be $11,836.44
    - *Standard lease rates are determined by a formula using land valuation set by the CBS Assessor and a 9% return annually on the asset value.*

Total lease area of 73,907. Total annual lease income of $26,606.52

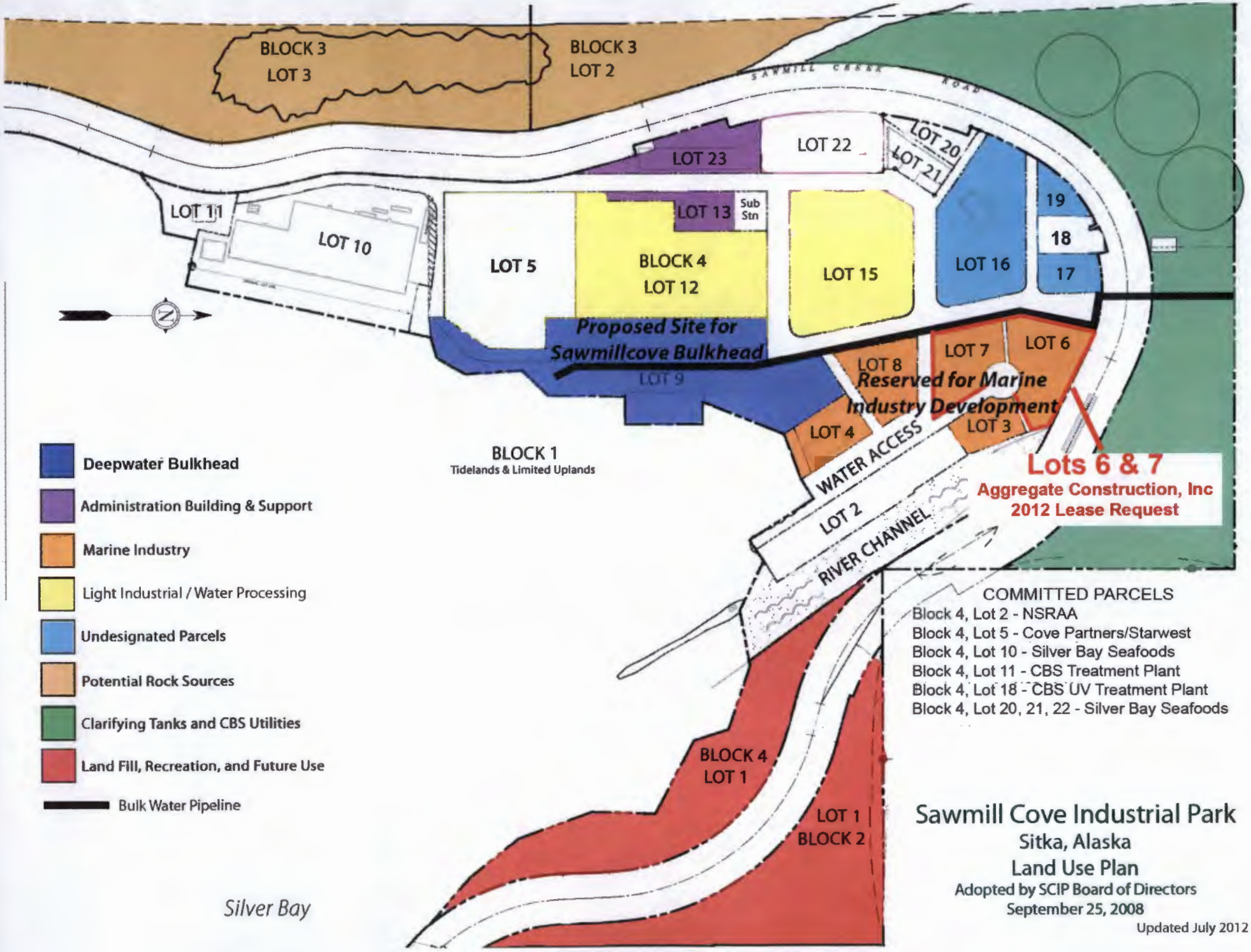
- Both lots 6 & 7 are covered with alder trees and have several piles of debris on the lot. Currently a majority of the lot square footage is not leasable.

Terms

- Minimum of 1 (one) year term.
- Lease rate of $0.36/SF/YR for a total annual lease payment of $26,606.52
- ACI is required to remove alders and debris on Lots 6 & 7..
- At termination of lease, ACI will leave the non-concrete lease area graded with crushed gravel at a level with the existing concrete pads.
- ACI will receive a one-time lease credit of $6,000 for site improvements.

Action

- Recommended approval of lease terms to ACI.


BLOCK 3
LOT 3
BLOCK 3
LOT 2
SAWMILL CREEK ROAD
LOT 23
LOT 22
LOT 20
LOT 21
LOT 11
LOT 10
LOT 13
Sub Stn
LOT 5
BLOCK 4
LOT 12
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LOT 16
19
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17
Proposed Site for Sawmillcove Bulkhead
LOT 9
LOT 8
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LOT 6
Reserved for Marine Industry Development
LOT 4
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RIVER CHANNEL
BLOCK 1
Tidelands & Limited Uplands
Lots 6 & 7
Aggregate Construction, Inc
2012 Lease Request
Deepwater Bulkhead
Administration Building & Support
Marine Industry
Light Industrial / Water Processing
Undesignated Parcels
Potential Rock Sources
Clarifying Tanks and CBS Utilities
Land Fill, Recreation, and Future Use
Bulk Water Pipeline
COMMITTED PARCELS
Block 4, Lot 2 - NSRAA
Block 4, Lot 5 - Cove Partners/Starwest
Block 4, Lot 10 - Silver Bay Seafoods
Block 4, Lot 11 - CBS Treatment Plant
Block 4, Lot 18 - CBS UV Treatment Plant
Block 4, Lot 20, 21, 22 - Silver Bay Seafoods
BLOCK 4
LOT 1
LOT 1
BLOCK 2
Silver Bay
Sawmill Cove Industrial Park
Sitka, Alaska
Land Use Plan
Adopted by SCIP Board of Directors
September 25, 2008
Updated July 2012

Sawmill Cove

INDUSTRIAL PARK

LEASE AGREEMENT

THE
CITY & BOROUGH
OF SITKA

&

AGGREGATE
CONSTRUCTION, INC.

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LEASE AGREEMENT
BETWEEN
CITY AND BOROUGH OF SITKA
AND
AGGREGATE CONSTRUCTION INC.

PREAMBLE

This Lease Agreement Between City And Borough Of Sitka And Aggregate Construction, Inc. ("Lease Agreement") is effective upon execution of the Lease Agreement by both Parties, City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and Aggregate Construction Inc., 401 Granite Creek Rd. #6, Sitka, Alaska 99835 ("Lessee"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A and B. Exhibit A is a pictorial representation of the area leased, consisting of Lots 6 & 7, of the Sawmill Cove Industrial Park ("SCIP"). Exhibit B is the "Management Requirements at Sawmill Cove Industrial Park, Sitka, Alaska," which summarizes the Prospective Purchasers Agreement, the Management Plan and the Conveyance Agreement regarding Sawmill Cove Industrial Park ("SCIP). This lease agreement was recommended by SCIP Board of Directors on August 27, 2012, and approved by the Assembly on September __, 2012.

SPECIAL PROVISIONS

ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease.
Lessor, for and in consideration of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Subject Property or Premises as shown on Exhibit A, for storage of equipment and materials, and for an asphalt plant. The subject property is Lots 6 & 7 of the SCIP, consisting of 73,907 square feet. The Term is for 1 (one) year, commencing upon execution of Lease Agreement as set out in the Preamble. This Lease Agreement may be extended beyond one year, upon mutual consent of the Parties.

Section 1.2 Reserved.

Section 1.3 Reserved.

Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement.
Lessee shall remove from the Subject Property any personal property or Improvements constructed, installed, or deposited on the Subject Property at the termination of this Lease Agreement or any extension unless Lessee makes a separate written agreement with Sitka to do otherwise. Any Improvements or personal property not removed after thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's

option shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat and clean condition at the end of the Term of the Lease Agreement.

Section 1.5 Covenants to Perform.
This Lease Agreement is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II: RENT

Section 2.1 Calculation & Method of Payment of Rent.
Notwithstanding any other provision of this Lease Agreement, on the Term start date set out in Article I, Lessee shall pay the full month rent payment owed under this Lease Agreement, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the lease payments in advance for the Term of the Lease Agreement without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for $2,217.21/month payable at a rate of $.03/SF/month. Sales tax is to be paid in addition to the stated Rent. Lessee will be refunded $6,000 at the end of the Term contingent on approval of the SCIP Executive Director, based on removal of alder trees and debris in the total lease area, and Lessee grading the non-concrete lease area with crushed gravel at the level of the existing concrete pads.

Section 2.2 Reserved.

Section 2.3 Reserved.

Section 2.4 Reserved.

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

Section 3.1 Lessee's Obligations as to Construction, Maintenance, Repair and Safety.
(a) Except as provided in this Lease Agreement, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may purchase, construct, develop, repair, and/or maintain any Improvements, using materials of good quality and matching existing finishes.

Lessor reserves the right to expand or modify the Subject Property. In that event, the Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any Improvements placed thereon only for lawful uses.

(d) Lessee shall confine its operation on the Subject Property to equipment and materials storage, and operation of an asphalt plant.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, or alleys adjoining the Subject Property except as may be permitted by Lessor or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the Term of this Lease Agreement to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessee may erect outdoor signage at its expense with the permission of the City and Borough of Sitka Building Official, the Planning Director, and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

Section 3.2 Lessor's Approval of Certain Alterations or Improvements.
Lessee shall not make or permit to be made any alteration of, addition to, or change in, structures and Improvements, nor demolish all or any part of the structures or Improvements without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. The phrase "structures and Improvements" in the previous sentence includes water and wastewater systems and electrical systems. In requesting consent Lessee shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director of the City and Borough of Sitka or his or her written designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan for full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease Agreement any Improvements or personal property as described in Section 1.4.

Section 3.3 Rights of Access to Property.
(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease Agreement. Sitka also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable

manner for the purposes of (1) inspection of all work being performed in connection with the construction of Improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent Improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

(c) Lessee acknowledges that the Subject Property is or shall be subject to agreements for ingress and egress, utilities, parking, and maintenance of common areas as described on attached Exhibit A. Lessee agrees that it shall comply with the terms of such cooperative agreements, in accordance with the terms of such agreements, those portions of such maintenance expenses that are attributable to the Subject Property, as more fully set forth therein.

Section 3.4 Additional Conditions of Leasing.
Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Subject Property to recognize that:

(a) Lessee will cooperate with the City and Borough of Sitka Public Works Department and will notify this Department of any maintenance deficiencies or of any equipment failures that require maintenance or repair. Lessee will be provided a 24 hour telephone number to notify the Lessor of any event that requires immediate response by the Lessor.

(b) Lease payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to the City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.

(c) Lease payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of $25 and interest accrued from the due date at 12% annum.

(d) The charges and fees paid by Lessee to Lessor must be separated according to the City and Borough of Sitka accounting standards.

(e) Lessor will only invoice if lease payments are delinquent. Lessor will only invoice if failure to make lease payment within 30 days of due date. Lessor at its option can terminate the Lease Agreement for Lessee's failure to make payment.

(f) Lessee covenants and agrees that as it relates to use of the facility, it will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants the Lessor the right to take such action to

enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(g) Lessor may sell the Subject Property in the future and all agreements regarding the Subject Property, including this Lease Agreement, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Subject Property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those set forth in this Lease Agreement.

(h) Lessor may, upon at least 10 days prior notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of water, wastewater service, electric power to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(i) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees and property taxes and assessments when due.

(j) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.

(k) City and Borough of Sitka sales tax will apply to lease payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from the City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Assembly of the City and Borough of Sitka.

(l) Lessee shall not store hazardous or explosive materials on the Subject Property or on any property of Sawmill Cove Industrial Park.

(m) Lessee shall removal all alder trees and debris from the Subject Property.

(n) Lessee shall leave the non-concrete area graded with crushed gravel at a level of the existing concrete pads on Subject Property.

Section 3.5 Control of Rodents and Other Creatures on Subject Property.
Lessee shall take reasonable affirmative measures to ensure that its operations do not attract to Subject Property or any portion of the Sawmill Cove Industrial Park property any of the following creatures: rodents, vermin, insects, eagles, crows, ravens, seagulls, or bears.

ARTICLE IV: UTILITY SERVICES & RATES

Section 4.1 Provision of Utility Services
Currently, no utility services are provided to the Subject Property. If and when utility services are provided, Lessee shall pay the cost of use of such utility services, to be paid monthly upon billing by the City and Borough of Sitka.

Section 4.2 Reserved.

Section 4.3 Reserved.

Section 4.4 Lessor Not Limited Liability and Non-Liability.
In the event utility services are provided, and except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease Agreement, Lessor shall not be liable for any failure of utility services, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, earthquake, hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of Subject Property, or leakage of sewer, or plumbing works therein, or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

Section 4.5. Requirement Regarding Potable Water Services.
All potable water services will be metered and protected by approved backflow prevention in accordance with the Sitka General Code at Section 15.05.400.

Section 4.6 Reserved.

ARTICLE V: LIABILITY AND INDEMNIFICATION

Section 5.1 Liability of Lessee and Indemnification of Lessor.
Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and structures and Improvements, including liability arising from products produced on the property. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the Term of this Lease Agreement from: (a) any condition of the Subject Property or Improvements placed on it; (b) any breach or default on the part of the Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease Agreement; (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease Agreement to indemnify the Lessor. The agreements of indemnity by the Lessee do not apply to any claims of

damage arising out of the failure of the Lessor to perform acts or render services in its municipal capacity.

Section 5.2 Liability of Lessor and Indemnification of Lessee.
Except to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease Agreement or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend, and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the Term of this Lease Agreement from (a) any condition of the Subject Property or Improvements placed on it; (b) any breach or default on the part of the Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease Agreement; (c) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease Agreement in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of indemnity are in addition to and not by way of limitation of any other covenants in this Lease Agreement to indemnify the Lessee.

Section 5.3 Reimbursement of Costs of Obtaining Possession.
Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease Agreement for all costs and charges, including but not limited to, full reasonable attorney and legal fees lawfully incurred in enforcing any provision of this Lease Agreement including obtaining possession of the Subject Property and establishing the Lessor's title free and clear of this Lease Agreement upon expiration or earlier termination of this Lease Agreement.

GENERAL PROVISIONS

ARTICLE VI: DEFINITIONS

Section 6.1 Defined Terms.
For the purposes of this Lease Agreement, the following words shall have the meanings attributed to them in this Section:

(a) "Event of Default" means the occurrence of any action specified in Section 14.1.

(b) "Imposition" means all of the taxes, assessments, utility rates or charges, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest therein or any rent and income received therefrom as well as sales taxes on rent.

(c) "Improvements" or "improvements" means all improvements of any nature now or hereafter located upon the Land, as well as all apparatus and equipment necessary for the complete and

comfortable use, occupancy, enjoyment and operation of the Subject Property, including any construction fencing or signage, excepting only in each case articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others, which can be removed without defacing or materially injuring the Improvements remaining on the Subject Property, from the Subject Property with the portion of the Subject Property from which such items are removed being returned to a condition at least as good as that existing on the date of this Lease Agreement. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.

(d) "Personal Property" means tangible personal property owned or leased and used by the Lessee or any sublessee of the Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease Agreement for the use of the demise.

(g) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(h) "Sublessee" and "Sublease" -- any reference to "sublessee" shall mean any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through the Lessee; the term "sublease" shall mean any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any Person holding by or through the Lessee.

(i) "Term" means the period of time Lessee rents or leases the Subject Property from Lessor.

ARTICLE VII: INSURANCE

Section 7.1 Insurance.
Lessee shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars ($1,000,000), including leasehold improvements. Lessor shall be named as an additional insured.

Section 7.2 Notification of Claim, Loss, or Adjustment.
Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 7.1.

Section 7.3 Waiver of Subrogation.
The Party insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease Agreement, or anyone claiming under it in connection with the Subject Property or Improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease Agreement to be so insured.

In such coverage the Parties hold on or waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost, the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE VIII: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

Section 8.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.

Lessee has no power under this Lease Agreement to assign the Lease Agreement or transfer the Subject Property, except with the approval of the SCIP Board of Directors and Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for a loan, mortgage, debt or liability.

Section 8.2 Limitations on Subleases.

Lessee shall not sublease the Subject Property or any portion of it except with the approval of the SCIP Board of Directors and the Sitka Assembly. All subleases entered into demising all or any part of the Improvements or the Subject Property shall be expressly subject and subordinate to this Lease Agreement, including Exhibits A and B. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease Agreement. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE IX: USE AND PROTECTION OF THE SUBJECT PROPERTY

Section 9.1 Property As Is - Repairs.

Lessee acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

Section 9.2 Compliance with Laws.

Lessee shall throughout the Term of this Lease Agreement and any extension, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the foregoing sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.

Section 9.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.
Lessee shall promptly notify the Public Works Director of the City and Borough of Sitka within 24 hours if any contaminated soils or other media that require special handling are encountered on the Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of Subject Property, adjoining property, and/or buildings caused by or attributed to Lessee though its operations on the Subject Property. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, the Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

Section 9.4 Use of Utility Lines.
No utility services are currently provided. If Lessee desires utilities, Lessee and Lessor shall negotiate and enter an amendment to this Lease Agreement regarding which utility services to provide, the costs associated with such services, and the rate for such utility service.

If such utility services are requested and granted, Lessee shall connect or otherwise discharge to such utility lines, including electrical, water and/or wastewater lines, as are approved by the appropriate City and Borough of Sitka Department, which may include Department of Public Works and/or Electrical Department, and shall obtain any permits and comply with any conditions specified by the Director of Public Works and/or Electric Department for such connections.

Section 9.5 Permits and Approvals for Activities.
Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Not less than ten (10) days in advance of applying for permits to any public entity other than the City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Director of Public Works of the City and Borough of Sitka to facilitate review by departments of the City and Borough of Sitka. The City and Borough of Sitka is not obligated to comment on the permit applications and plans, and the result of any review by the City and Borough of Sitka does not affect Lessee's obligation to comply any applicable laws.

ARTICLE X: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED

Section 10.1 Performance of Lessee's Covenants To Pay Money.
Lessee covenants that if it shall at any time default or shall fail to make any other payment (other than rent) due and the failure shall continue for ten (10) days after written notice to the Lessee, then the Lessor may, but shall not be obligated so to do, and without further notice to or demand upon the Lessee and without releasing the Lessee from any obligations of the Lessee under this Lease Agreement, make any other payment in a manner and extent that the Lessor may deem desirable.

Section 10.2 Lessor's Right To Cure Lessee's Default.
If there is a default involving the failure of the Lessee to keep the Subject Property in good condition and repair in accordance with the provisions of this Lease Agreement, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease Agreement or to take any other action required by the terms of this Lease Agreement, then the Lessor shall have the right, but shall not be required, to make good any default of the Lessee. The Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to the Lessee by reason of bringing materials, supplies and equipment on the Subject Property during the course of the work required to be done to make good such default, and the obligations of the Lessee under this Lease Agreement shall remain unaffected by such work, provided that the Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to the Lessee.

Section 10.3 Reimbursement of Lessor and Lessee.
All sums advanced by the Lessor pursuant to this Article and all necessary and incidental costs, expenses and attorney fees in connection with the performance of any acts, together with interest at the highest rate of interest allowed by law from the date of the making of advancements, shall be promptly payable by the Lessee, in the respective amounts so advanced, to the Lessor. This reimbursement shall be made on demand, or, at the option of the Lessor, may be added to any rent then due or becoming due under this Lease Agreement and the Lessee covenants to pay the sum or sums with interest, and the Lessor shall have (in addition to any other right or remedy) the same rights and remedies in the event of the nonpayment by the Lessee as in the case of default by the Lessee in the payment of any installment of rent. Conversely, the Lessee shall be entitled to receive from the Lessor prompt payment or reimbursement on any sums due and owing from the Lessor to the Lessee, together with interest at the highest rate allowed by law. However, nothing contained in this Lease Agreement shall entitle the Lessee to withhold any rent due to the Lessor or to offset or credit any sums against rent, except with respect to unpaid rental due from the Lessor to the Lessee under any sublease of building space to the Lessor.

ARTICLE XI: DAMAGE OR DESTRUCTION

Section 11.1 Repair and Replacement of Structures and Improvements Following Damage.
(a) If the Premises shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy and such destruction or injury could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Premises, nor shall Lessee's liability to pay rent under this Lease Agreement cease, without the mutual consent of the Parties; in case of any such destruction or injury, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Premises, a proportionate allowance shall be made to Lessee from the Rent corresponding to the time during which and to the portion of the Premises of which Lessee shall be so deprived of the use.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in 90 days. If Lessor elects not to repair or rebuild, this Lease Agreement shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete, and Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice, to elect either to terminate this Lease Agreement and further liability hereunder, or to extend the Term of this Lease Agreement by a period of time equivalent to the time from the happening of such destruction or injury until the Premises are restored to their former condition. In the event Lessee elects to extend the Term of this Lease Agreement, Lessor shall restore the Premises to their former condition within the time specified in the notice, and Lessee shall not be liable to pay Rent for the period from the time of such destruction or injury until the Premises are so restored to their former condition.

(c) The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII: MECHANIC'S LIENS

Section 12.1 Discharge of Mechanics' Liens.
The Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against the Lessee's interest in the property, nor against the Improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone having a right to possession of the Subject Property or Improvements as a result of an agreement with or the assent of the Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, the Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES

Section 13.1 Lien for Rent.
The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by the Lessor under the provisions of this Lease Agreement, and all costs, attorney's fees and other expenses which may be incurred by the Lessor in enforcing the provisions of this Lease Agreement or on account of any delinquency of the Lessee in carrying out any of the provisions of this Lease Agreement, shall be and they are declared to constitute a valid and prior lien upon the Lessee and Lessee's Improvements to the Subject Property, and upon the Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV: DEFAULT PROVISIONS

Section 14.1 Events of Default.
Each of the following events is defined as an "Event of Default":

(a) The failure of the Lessee to pay any installment of Rent, or any other payments or deposits of money, or furnish receipts for deposits as required, when due and the continuance of the failure for a period of ten (10) days after notice in writing from the Lessor to the Lessee.

(b) The failure of the Lessee to perform any of the other covenants, conditions and agreements of this Lease Agreement including payment of taxes on the part of the Lessee to be performed, and the continuance of the failure for a period of thirty (30) days after notice in writing (which notice shall specify the respects in which the Lessor contends that the Lessee has failed to perform any of the covenants, conditions and agreements) from the Lessor to the Lessee unless, with respect to any default which cannot be cured within thirty (30) days, the Lessee, or any person holding by, through or under the Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

(c) The filing of an application by the Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of the Lessee's interest in this Lease Agreement): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.

(d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating the Lessee a bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days, or if this Lease Agreement is taken under a writ of execution.

Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee.
In the event that this Lease Agreement is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 *et seq.*), and the trustee shall cure any default under this Lease Agreement and shall provide adequate assurances of future performance of this Lease Agreement as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease Agreement shall be deemed rejected automatically and the Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease Agreement.

Section 14.3 Remedies in Event of Default.
The Lessor may treat any one or more of the Events of Default as a breach of this Lease Agreement and at its option, by serving written notice on the Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has notice (such notice not to be effective unless served on each such person) of the Event of Default of which the Lessor shall have received notice in

writing, the Lessor shall have, in addition to other remedies provided by law, one or more of the following remedies:

(a) The Lessor may terminate this Lease Agreement and the Term created, in which event the Lessor may repossess the entire Subject Property and Improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease Agreement, of the Rent provided to be paid by the Lessee for the balance of the stated term of this Lease Agreement less the fair rental value as of the date of termination of this Lease Agreement of the fee interest in the Subject Property and Improvements for the period, and any other sum of money and damages due under the terms of this Lease Agreement to the Lessor and the Lessee. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) The Lessor may terminate the Lessee's right of possession and may repossess the entire Subject Property and Improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to the Lessee (except as above expressly provided for) and without terminating this Lease Agreement, in which event the Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for rent and upon terms as shall be satisfactory in the judgment reasonably exercised by the Lessor (including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated Term of this Lease Agreement and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property). For the purpose of reletting, the Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and Improvements that may be reasonably necessary or convenient in the Lessor's judgment reasonably exercised; and if the Lessor shall be unable, after a reasonable effort to do so, to relet the Subject Property, or if the Subject Property is relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the rent accruing from it, to satisfy the rent above provided to be paid, then the Lessee shall pay to the Lessor as damages a sum equal to the amount of the rent reserved in this Lease Agreement for the period or periods as and when payable pursuant to this Lease Agreement, or, if the Subject Property or any part of it has been relet, the Lessee shall satisfy and pay any deficiency upon demand from time to time; and the Lessee acknowledges that the Lessor may file suit to recover any sums falling due under the terms of this Section from time to time and that any suit or recovery of any portion due the Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of the Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by the Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease Agreement, the Lessor shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease Agreement.

(d) Upon the termination of this Lease Agreement and the Term created, or upon the termination of the Lessee's right of possession, whether by lapse of time or at the option of the Lessor, the

Lessee will at once surrender possession of the Subject Property and dispose of personal property and Improvements as described in Section 1.4. If possession is not immediately surrendered, the Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease Agreement has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that the Lessee shall fail to make any payment required to be made provided for in this Lease Agreement or defaults in the performance of any other covenant or agreement which the Lessee is required to perform under this Lease Agreement during the period when work provided for in this Lease Agreement shall be in process or shall be required by the terms of this Lease Agreement to commence, the Lessor may treat the default as a breach of this Lease Agreement and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease Agreement, the Lessor shall have the right to carry out or complete the work on behalf of the Lessee without terminating this Lease Agreement.

Section 14.4 Waivers and Surrenders To Be In Writing.
No covenant or condition of this Lease Agreement shall be deemed to have been waived by the Lessor unless the waiver be in writing, signed by the Lessor or the Lessor's agent duly authorized in writing and shall apply only with respect to the particular act or matter to which the consent is given and shall not relieve the Lessee from the obligation, wherever required under this Lease Agreement, to obtain the consent of the Lessor to any other act or matter.

ARTICLE XV: LESSOR'S TITLE AND LIEN

Section 15.1 Lessor's Title and Lien Paramount.
The Lessor has title to the Land, and the Lessor's lien for Rent and other charges shall be paramount to all other liens.

Section 15.2 Lessee Not To Encumber Lessor's Interest.
The Lessee shall have no right or power to and shall not in any way encumber the title of the Lessor in and to the Subject Property. The fee-simple estate of the Lessor in the Subject Property shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by the Lessee, and any claim to the lien or otherwise upon the Subject Property arising from any act or omission of the Lessee shall accrue only against the leasehold estate of the Lessee in the Subject Property and the Lessee's interest in the Improvements, and shall in all respects be subject to the paramount rights of the Lessor in the Subject Property.

ARTICLE XVI: REMEDIES CUMULATIVE

Section 16.1 Remedies Cumulative.
No remedy conferred upon or reserved to the Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or existing at law or in equity or by statute. Every power and remedy given by this Lease Agreement to the Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 16.2 Waiver of Remedies Not To Be Inferred.
No waiver of any breach of any of the covenants or conditions of this Lease Agreement shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

Section 16.3 Right to Terminate Not Waived.
Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease Agreement, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of the Lessor to declare ended the Term granted and to terminate this Lease Agreement because of any event of default.

ARTICLE XVII: SURRENDER AND HOLDING OVER

Section 17.1 Surrender at End of Term.
Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to the Lessor at the termination of the Lease Agreement, subject to the provisions of Section 1.4, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. At the time of the surrender, the Lessee shall also surrender any and all security deposits and rent advances of Sublessees to the extent of any amounts owing from the Lessee to the Lessor. If the Subject Property is not so surrendered, the Lessee shall repay the Lessor for all expenses which the Lessor shall incur by reason of it, and in addition, the Lessee shall indemnify, defend and hold harmless the Lessor from and against all claims made by any succeeding Lessee against the Lessor, founded upon delay occasioned by the failure of the Lessee to surrender the Subject Property.

Section 17.2 Rights Upon Holding Over.
At the termination of this Lease Agreement, by lapse of time or otherwise, the Lessee shall yield up immediately possession of the Land to the Lessor and, failing to do so, agrees, at the option of the Lessor, to pay to the Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or payable to Lessor during the last month of the Term of the Lease Agreement the day before the termination of the Lease Agreement. The provisions of this Article shall not be held

to be a waiver by the Lessor of any right or reentry as set forth in this Lease Agreement, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease Agreement and the Term granted for the period still unexpired for any breach of the Lessee under this Lease Agreement.

ARTICLE XVIII: MODIFICATION

Section 18.1 Modification.
None of the covenants, terms or conditions of this Lease Agreement to be kept and performed by either Party to this Lease Agreement shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

ARTICLE XIX: INVALIDITY OF PARTICULAR PROVISIONS

Section 19.1 Invalidity of Provisions.
If any provision of this Lease Agreement or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XX: APPLICABLE LAW AND VENUE

Section 20.1 Applicable Law.
This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease Agreement shall be only in the Superior Court for the State of Alaska at Sitka, Alaska.

ARTICLE XXI: NOTICES

Section 21.1 Manner of Mailing Notices.
In every case where under any of the provisions of this Lease Agreement or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to the Lessor or the Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.
The Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other noncompliance with the terms of this Lease Agreement. All notices, demands or requests which

may be required to be given by the Lessor or the Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to the Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of the Lessor or the Lessee, as the case may be.

Section 21.3 Sufficiency of Service.
Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 21.4 When Notice Deemed Given or Received.
Whenever a notice is required by this Lease Agreement to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease Agreement of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXII: MISCELLANEOUS PROVISIONS

Section 22.1 Captions.
The captions of this Lease Agreement and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease Agreement, nor in any way affect this Lease Agreement.

Section 22.2 Conditions and Covenants.
All the provisions of this Lease Agreement shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 22.3 Entire Agreement.
This Lease Agreement contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

Section 22.4 Time of Essence as to Covenants of Lease Agreement.
Time is of the essence as to the covenants in this Lease Agreement.

ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY

Section 23.1 Covenants to Run with the Subject Property.
All covenants, agreements, conditions and undertakings in this Lease Agreement shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants running with the Subject Property. Wherever in this Lease Agreement reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

Section 23.2 Interest in Deposits Automatically Transferred.
The sale, conveyance or assignment of the interest of the Lessee (pursuant to the terms of this Lease Agreement) or of the Lessor in and to this Lease Agreement shall act automatically as a transfer to the assignee of the Lessor or of the Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and the Lessor, and every subsequent sale, conveyance or assignment by any assignee of the Lessor or of the Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and the Lessor to the subsequent assignee.

ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS

Section 24.1 Absence of Personal Liability.
No member, official, or employee of the Lessor shall be personally liable to the Lessee, its successors and assigns, or anyone claiming by, through or under the Lessee or any successor in interest to the Subject Property, in the event of any default or breach by the Lessor or for any amount which may become due to the Lessee, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease Agreement. No member, official, or employee of the Lessee shall be personally liable to the Lessor, its successors and assigns, or anyone claiming by, through, or under the Lessor or any successor in interest to the Subject Property, in the event of any default or breach by the Lessee or for any amount which become due to the Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease Agreement.

Section 24.2 Lease Agreement Only Effective As Against Lessor Upon Approval.
This Lease Agreement is effective as against Lessor only upon the approval of this month to month Lease Agreement by the Sawmill Cove Industrial Park Board of Directors, in accordance with the Sitka General Code at Chapter 2.38, and signed by the Municipal Administrator.

Section 24.3 Binding Effects and Attorneys Fees.
This Lease Agreement shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease Agreement, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

Section 24.4 Duplicate Originals.
This Lease Agreement may be executed in any number of copies, each of which shall constitute an original of this Lease Agreement. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

Section 24.5 Declaration of Termination.
With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of the Lessee in the Subject Property, the Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka Recording District, a written declaration of the termination of all rights and title of Lessee in the Subject Property, and the revesting of any title in the Lessor as specifically provided in this Lease Agreement.

Section 24.6 Authority.
Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease Agreement and perform its obligations. Both Parties also represent that this Lease Agreement has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

AGGREGATE CONSTRUCTION INC. **CITY AND BOROUGH OF SITKA**

_____ _____

Larry Shinn James Dinley, Municipal Administrator

STATE OF ALASKA)
) **ss.**
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, Larry Shinn, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease Agreement on behalf of Aggregate Construction, Inc., and affirms by signing this document to be authorized to sign on behalf of the Aggregate Construction, Inc., and does so freely and voluntarily.

_____
Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) **ss.**
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2012, JAMES DINLEY, MUNICIPAL ADMINISTRATOR of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

_____
Notary Public for Alaska
My Commission Expires: _____

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-125	**Version:**	1	**Name:**	
Type:	Contract/Agreement			**Status:**	PASSED
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012
Title:	Award CBC Construction, Inc. a bid for renovations to 4690 Building (formerly The Boat Company building) at Sawmill Cove Industrial Park as approved and recommended by Sawmill Cove Board of Directors - $139,260.42 and Change Order to substitute radiant floor heating with less expensive option				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	CBC Award Bldg 4690				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	APPROVED	Pass

powered by Legistar™

Sawmill Cove
INDUSTRIAL PARK
329 Harbor Dr. Suite 212, Sitka, AK 99835 907-747-2660

Tuesday, September 04, 2012

MEMORANDUM

To: Mayor Westover and Members of the Assembly
Jim Dinley, CBS Administrator

From: Garry White, Director

Review by: Lance Henrie – Senior Engineer
Michael Harmon – Public Works Director
Jay Sweeney – Finance Director

Subject: Building 4690 Renovations RFP Approval

Introduction

The Sawmill Cove Industrial Park (SCIP) Board of Directors recommends accepting the bid from CBC Construction, Inc. for renovations to the 4690 Building (formerly the Boat Company building) as approved by the SCIP Board at their meeting of August 27, 2012.

Background

In 2000, The CBS and The Boat Company entered into a lease agreement to lease Lot 4 and tidelands at the SCIP. The Boat Company intended to construct a building for operations and a boat house on the tidelands for maintenance work. The Boat Company started construct of the operations building in 2001. The foundation and outer shell of a 6,900 SF building were completed before construction was halted in September, 2001. The Boat Company abandoned their business plans for the site due to perceived changes in the market place concerning the September 11th attacks. The Boat Company continued to lease the site, with the building sitting empty until December 2009. In 2009, the CBS agreed to terminate the lease with The Boat Company building in exchange for the building being deeded to the CBS.

The building continued to sit empty due to the lack of utilities in the building and proper fire suppression equipment, which did not allow rental of the building. The CBS Electrical Department has requested to lease the building during the upcoming Blue Lake Dam expansion project. The SCIP Board met in March, 2012 and requested the CBS bring the building to a leasable status.

The CBS Public Works Department released an RFP in July requesting professional design and construction services to bring the building to a leasable condition. The CBS received two bids for the project, the lowest being from CBC Construction, Inc. in the amount of $139,260.42.

Additional Information

- The bid from CBS Construction does not include an electrical transformer for the building. The CBS electrical department estimates the cost at $35k.

- The SCIP Board reviewed the proposals for the building at their August 2012 meeting. The Board requested that #7 in the scope of work, to "design, furnish and complete radiant floor heating system for building," can be substituted for a less expensive heating system.
    - This would provide a cost savings that could be used for additional work recommended by the CBS Building Maintenance Superintendent including; fixing rain gutters, installing snow slide guards to prevent future gutter damage, and possibly installing the artic entries that are designed for this building.

Financial Information

- The SCIP Enterprise fund has $380,811 in undesignated working capital available for this project. Please see attached SCIP financial information.

- Once completed, the building will provide an additional $82,800 in annual lease income that is currently not being earned. Having the building leasable will also make Lot 4 more marketable. Lot 4 will bring in an additional $11,287 in lease revenue. Total additional lease income from building and lot 4 = $94,087.

Attached Information

- Bid Sheets
- Addendum #1, which shows scope of work for the building.
- Map of the SCIP
- SCIP financial information

Action

Recommend accepting the bid from CBS Construction, Inc. in the amount of $139,260.42 and directing the Public Works Department to create a change order to substitute the radiant floor heating system with a less expensive option.

esign Build SCIP Boat Co Bldg 4690 Renovations
ugust 16, 2012
y: Mellissa Cervera

BASE BID:				CBC Construction Inc	Coastal Excavation LLC
Item No.	Approx Quantity	Per	Name of Pay Item	Total Bid Price	Total Bid Price
1	1	Lump Sum	Clearing and Grubbing	$ 2,000.00	$ 1,500.00
2	1	Lump Sum	Design, Furnish and Install Fire Sprinkler System	$ 32,400.00	$ 33,960.00
3	1	Lump Sum	Design, Furnish and Install Interior/Exterior Lighting, Outlets, Building Electrical Panel & Electric Hot Water System	$ 29,160.00	$ 30,000.00
4	1	Lump Sum	Design, Furnish and Install Interior Plumbing, Plumbing Fixtures and Sewer Pump System	$ 1,800.00	$ 20,000.00
5	1	Lump Sum	Design, Furnish and Install Interior Walls, Unisex bathroom, Mechanical Room & Laundry Room	$ 18,140.42	$ 35,000.00
6	1	Lump Sum	Design, Furnish and Install Domestic Water System for Building	$ 900.00	$ 22,000.00
7	1	Lump Sum	Design, Furnish and Complete Radiant Floor Heating System for Building	$ 42,360.00	$ 53,000.00
8	1	Lump Sum	Final Completion Payment	$ 5,000.00	$ 5,000.00
9	1	Lump Sum	Warranty Payment	$ 2,500.00	$ 2,500.00
10	1	Lump Sum	Minor Changes	$ 5,000.00	$ 5,000.00
			TOTAL BASE BID	$ 139,260.42	$ 207,960.00

CITY AND BOROUGH OF SITKA
Sawmill Cove Industrial Park Boat Company
Building 4690 Renovations

ADDENDUM NO. 1

DATE: August 14, 2012

BID OPENING: **THURSDAY, August 16, 2012, 2:00 PM**

PAGES: 2 Pages of Addendum
2 Pages Amended Section I Introduction/ Background in the RFP
2 Pages Amended Section VI Proposal Form in the RFP
Revised Drawing (1 page)

Bidders must acknowledge receipt of Addendums in the appropriate place on the Bid Form. Failure to do so may subject bidder to disqualification.

This Addendum provides additional and/or revised information with respect to the subject Request for Proposal, and related documents. This Addendum forms a part of the Contract Documents.

General

1. Those in attendance at the mandatory pre-proposal meeting were:
   Lance Henrie, City and Borough of Sitka
   Garry White, Sitka Economic Development Association
   Jason Skannes, CPH Inc.
   Kris Pearson, Coastal Excavation
   Doug Helem, Sitka Electric
   Chris Mattingly, SE Fire Protection
   Dan Jones, Daniel G. Jones, P.E., LLC
   Christian Scantling, CBC Construction

2. The estimated cost for this project is between $50,000 and $100,000.

3. Point of clarification: It is the intent of the City and Borough of Sitka to make the existing warehouse building (Boat Company Building 4690) a leasable warehouse building complete with sewer, water, electrical and completed radiant floor heating system. The plans provided in the RFP are original design plans and are for reference only. They can be used as a guideline but do not need to be duplicated. For example, the room referenced throughout the RFP and shown on the plans as "laundry room" is not planned at this time to be a laundry room and will not need to be wired and/or plumbed for laundry facilities with this project. The reference to laundry room throughout the project scope is simply for identifying purposes only. Please provide the minimums as specified in the scope work for the design of this project.

4. It was determined after the pre-proposal meeting that the existing domestic water, fire system water and pressure sewer services have been installed from the property line to the building and proposed E-One pump location, respectively, as shown on the plans included in the RFP (valves were located near the property line).

5. All design build contractors shall submit engineered stamped plans for CBS approval.

REPLACE:

1. Replace in its entirety, in the Request for Proposal, Section I: Introduction/ Background with the attached Amended Section I Introduction/ Background.

2. Replace in its entirety, in the Request for Proposal, Section VI Proposal Form with the attached Amended Section VI, Proposal Form.

Drawings:

SCIP Boat Company Building Floor Plan Drawing indicating one hour fire wall construction and partition wall construction: ***ADD*** "Framing Only" to partition wall type and **ADD** two small partition walls for connecting main partition wall to metal framing of the building and to frame in the Apex supply and return lines at the manifold location within the future office space. **ADD** one hour fire rated wall around double doors in mechanical room.

END OF ADDENDUM NO. 1

AMENDED
SECTION I INTRODUCTION/BACKGROUND

I. Introduction/Background

The City and Borough of Sitka (CBS) desires to have improvements designed and installed to the existing metal framed storage/office building located at the Sawmill Cove Industrial Park (formerly "The Boat Company Building"), currently known as "The 4690 Sawmill Creek Road Building", 4690 Sawmill Creek Road, Sitka, Alaska.

The existing building is an engineered metal building 60' wide by 115' long with 15'eaves at the sidewall with metal roof and siding constructed in 2001. A concrete floor slab exists. The building was originally designed to include wood framed interior offices with an open second floor (mezzanine) at the south end, but the office spaces were never constructed. The metal building interior spaces and finishes were never completed including the fire sprinkler system, lighting system, water system, sanitary sewer system or bathrooms. Stub outs for domestic water, fire protection, sanitary sewer and electrical exist stubbing up through the existing concrete floor slab within the building. The scope of this project is to design and construct the following:

- **Clearing and grubbing of the site areas around the building where utility connections are made. Locate all existing mains, stub-outs, conduits, etc. (the pressure sewer, potable water and fire water system valves have been located in the trees north of the building,**
- One hour rated fire walls to be constructed around the mechanical room, and on partial walls for the unisex bathroom and laundry room **(as labeled, not to be designed as a laundry room)** as shown in the referenced drawings. Also on walls shown on the referenced color drawing (between future office and mechanical/uni-sex bathroom). Walls to be gypsum board, taped, textured and painted. Framing of these areas to support future mezzanine construction. Doors to be one hour fire rated **with Best 93K locksets,**
- Partition wall to be constructed **(framing only)** from laundry room to east wall as shown in referenced drawings,
- Unisex bathroom and laundry room to have vinyl floor coverings,
- NFPA 13 compliant wet fire suppression system in the mechanical room with the rest of the building a dry fire sprinkler system installed. Sprinkler system materials exist on site and the design build contractor may use these materials for this project,
- Unisex bathroom to meet accessible standards. Interior plumbing fixtures for the unisex bathroom include one toilet fixture and sink. **Design build contractor shall use American Standard toilet and sink with Chicago faucets. Design build contractor shall supply a metal or aluminum plate to safely cover the existing hole in the concrete floor for the shower drain (shower is not a part of this project).**
- Completion of the radiant floor heating system within the building. Apex supply and return piping exists beneath the concrete floor slab and is stubbed up at the manifold location within the building. **Heating system controls and materials also exist on site and the design builder may use these materials for this project.** Design and installation of a new ~~high efficiency~~ **Weil McLain (or approved equal)** boiler including thermostats, zone valves, water temp control valves, boiler controls, fittings, expansion

tank, pressure reducing valve, check valve, pressure regulators, backflow preventer, heat exchanger, above ground 300 gallon fuel oil tank with copper fuel supply/return lines, testing of system, and any other required items to make a complete and functional radiant floor heating system. Boiler must be sized to efficiently maintain a minimum room temperature of 20 degrees above ambient outside temperatures during winter conditions. **In no case can the interior room temperature drop below 35 degrees.**

- Electric **demand** hot water heater for providing hot water to unisex bathroom, ~~and laundry room~~,
- Interior lighting, **exterior lighting,** and electrical outlets for the mechanical room, unisex bathroom, laundry room, ~~remaining office space~~ and **main** storage area. **Provide a minimum of twelve (12) T-5HO high bay fixtures adequately spaced throughout the building including above the future mezzanine area. All other interior lights to be T-5 four foot strip. Existing electrical plans should be uses as a guide for electrical design but not replicated. Remaining office space shall be planned for future lighting and electrical outlets but not installed with this project. For design purposes, provide a minimum of one duplex electrical receptacle on each interior wall or per code requirements, whichever is greater. Provide exterior building lighting (with photocell controls) per code requirements.**
- Electrical junction panel and fuse panel inside the building. Underground power service with meter installed to the building. **For design purposes, design build contractor shall assume a 400 amp, 3 phase service for the building. Service to the property line will be provided by the CBS Electric Department. Design build contractor shall coordinate installation of the power with the CBS Electic Department and shall fully comply with all their requirements,**
- ~~Completion of the interior oil/water separator and connection to the exterior storm drain system,~~ **It is assumed that the interior oil/water separator connection has already been made.**
- Completion of installation, testing and reporting of the domestic and fire water system. **The domestic and fire water systems have been located and have been installed from the property line to the building,**
- Installation of the CBS furnished E-One sewer pump unit for the building including connection to the building sewer and to the pressure sewer service ~~on the property line~~ **as shown on the old plans. The building gravity sewer and pressure sewer service have been installed to the E-One pump location as shown on the plans. Design build contractor shall verify working condition of existing pressure sewer valve located at the property line prior to E-One unit start up.** A new E-One duplex control panel will need to be furnished and installed by the design build contractor.

It is the intent of the City and Borough of Sitka to award a single design-build contract for both design and construction. Design services shall be performed by Alaskan registered professional architects and engineers under contract to the Design Builder.

CBS reserves the right to accept or reject any or all proposals, to waive irregularities or informalities in the proposals, and to award the contract to the respondent that best meets the selection criteria. The City and Borough shall not be liable for any costs incurred by bidders in connection with this proposal.

AMENDED
SECTION VI PROPOSAL FORM

VI. Proposal Form

TO: CITY AND BOROUGH OF SITKA
ATTN: Municipal Clerk
100 Lincoln Street, Sitka, AK 99835

The undersigned proposes to furnish all professional services, tools, equipment, supplies, manufactured articles, labor and materials, services and incidentals, and to perform all work necessary for the completion of the Sawmill Cove Industrial Park Boat Company Building 4690 Renovations Project and furthermore thoroughly understands the Project and the method by which payment will be made for said Project. The undersigned proposes to complete the project in accordance with said Scope of Work, Project Criteria, Project Performance Standards, and General Requirements at the following Contract Price. **Any work element not specifically listed shall be incidental.**

Item No.	Approx. Quantity	Pay Item with Unit Bid Price Written in Words	Unit Price	Bid Price	
				Dollars	Cents
1.	Lump Sum (LS)	Clearing and Grubbing _____ _____ _____ Lump Sum	Per Lump Sum	$	
2.	Lump Sum (LS)	Design, Furnish and Install Fire Sprinkler System_____ _____ _____ Lump Sum	Per Lump Sum	$	
3.	Lump Sum (LS)	Design, Furnish and Install Interior/Exterior Lighting, Outlets, Building Electrical Panel and Electric Hot Water System _____ _____ _____ Lump Sum	Per Lump Sum	$	
4.	Lump Sum (LS)	Design, Furnish and Install Interior Plumbing, Plumbing Fixtures and Sewer Pump System _____ _____ _____ Lump Sum	Per Lump Sum	$	
5.	Lump Sum (LS)	Design, Furnish and Install Interior Walls, Unisex Bathroom, Mechanical Room and Laundry Room _____ _____ _____ Lump Sum	Per Lump Sum	$	
6.	Lump Sum (LS)	Design, Furnish and Install Domestic Water System for Building _____ _____ _____ Lump Sum	Per Lump Sum	$	

AMENDED
SECTION VI PROPOSAL FORM

7.	Lump Sum (LS)	Design, Furnish and Complete Radiant Floor Heating System for Building _____ _____ _____ Lump Sum	Per Lump Sum	$	
8.	Lump Sum (LS)	Final Completion Payment *Five Thousand Dollars* Lump Sum	Per Lump Sum	$5,000	00
9.	Lump Sum (LS)	Warranty Payment *Two Thousand Five Hundred Dollars* Lump Sum	Per Lump Sum	$2,500	00
10.	Lump Sum (LS)	Minor Changes _____ *Five Thousand Dollars* Lump Sum	Per Lump Sum	$5,000	00

$ _____
Bid Total – In Numbers

_____
Bid Total – Written

Reference Section IV: Proposal Format and Content for Required Documents to be submitted with this Proposal Form.

SUBMITTED BY:_____
(Company Name)

_____
(Company Contact)

_____
(Address)

_____
(Telephone)

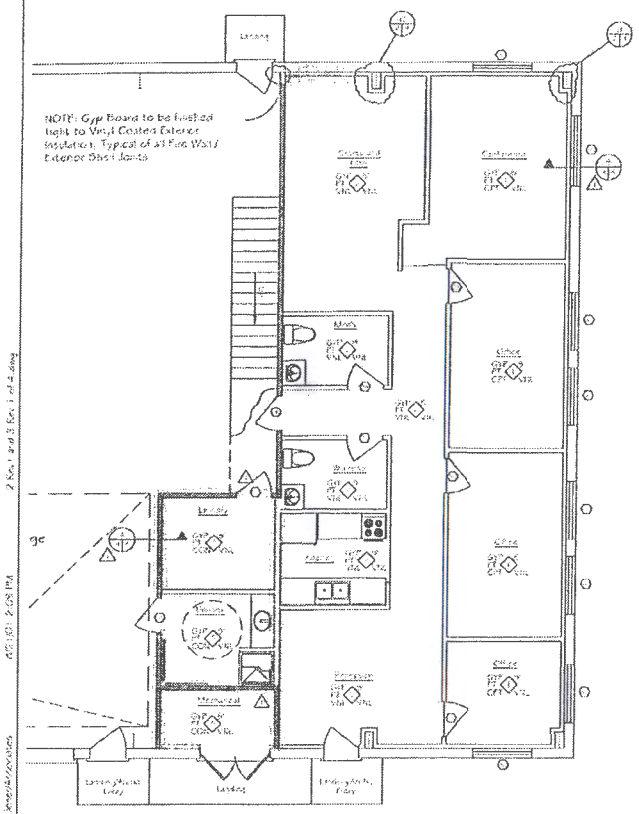
_____
(Alaska Contractor License No.)

_____
(Authorized Signature)

I hereby acknowledge receipt of the following addenda: Addendum No._____ Addendum No_____
Addendum No. _____ Addendum No. _____

WALL TYPES

ONE HOUR FIRE RATED WALLS & CEILINGS
5/8" TYPE X GYPSUM BOARD – TAPED, TEXTURED & PAINTED
PARTITION WALL (FRAMING ONLY)



Interior Finishes
1/8" = 1'

Interior Finish Schedule

FLOOR COVERINGS
Offices: Carpet, Commercial Grade, Shaw Bermuda Ultralon or Equal, color by owner
Kitchen & Bathrooms: Sheet Vinyl, Armstrong Mediteck, Color by Owner
Reception, Hallways & Stairs: Sheet Vinyl, Armstrong Mediteck, color by owner
Laundry, Mech. & Shop: Steel Troweled Concrete w/ Sealant

WALLS & CEILINGS
Offices: Walls - 1/2" Type X Gyp Board Taped, Textured & Painted
Ceiling - (2) Layers 5/8" Type X Gyp Board Taped, Textured & Painted
Kitchen & Bathrooms:
Walls - 1/2" Type X Gyp Board Taped, Textured & Painted
Ceiling - (2) Layers 5/8" Type X Gyp Board Taped, Textured & Painted
Reception, Hallways & Stairs:
Walls - 1/2" Type X Gyp Board Taped, Textured & Painted
Ceiling - (2) Layers 5/8" Type X Gyp Board Taped, Textured & Painted
Laundry & Mechs:
Walls - 1/2" Type X Gyp Board Taped, Textured & Painted
Ceiling - (2) Layers 5/8" Type X Gyp Board Taped, Textured & Painted

WALLS & CEILINGS
Vinyl Cove Base, Color by Owner
2 3/4" Fiberoid Ceiling, Prefinished to Match Doors

Finish Key
Wall/Ceiling Ceiling Height
Finish
Floor Covering Base

FIXTURES

PLUMBING FIXTURES
Watercloset - ADA Compliant, Kohler 4501-61, or equal
Lavatory - ADA Compliant, Kohler revitalize style, or equal
Shower - ADA Compliant, Kohler K12101, or equal

ELECTRICAL FIXTURES
Fixture A- Metalux DH232120VEBSWGDHU, or equal
Fixture B - Hole H70ICT, or equal

Door Schedule

INTERIOR DOORS:
Widths x 6'-8" Solid Core, 1 3/8" thick, Birch Veneer
Width of Wall Standard Finish Grade Hemlock Frames
Door Hardware - Yale 4300LN Lever Set

DOOR SCHEDULE
Finish - Natural Varnish
Automatic Closer (At Fire Rated Doors) - Corbin
#DC2210A3-M54-M72

Symbol	Dimension	Description
D1	3-0x6-8	Interior
D2	3-0x6-8	Interior
D3	3-0x6-8	Interior
D4	3-0x6-8	Interior
D5	3-0x6-8	Interior
D6	3-0x6-8	Interior 1Hr Fire Rated
D7	3-0x6-8	Interior 1Hr Fire Rated
D8	3-0x6-8	Interior 1Hr Fire Rated

CABINETS
Double Cabinets, Spring Valley, Natural Oak Finish

APPLIANCES
GE (or equivalent) Professional Gas Range, Refer, Range Hood, Dishwasher (Owner Approved)

WINDOW SCHEDULE
5'-0" X 4'-0" Vinyl, double pane fixed glass
5'-0" X 4'-0" Vinyl, double pane slider

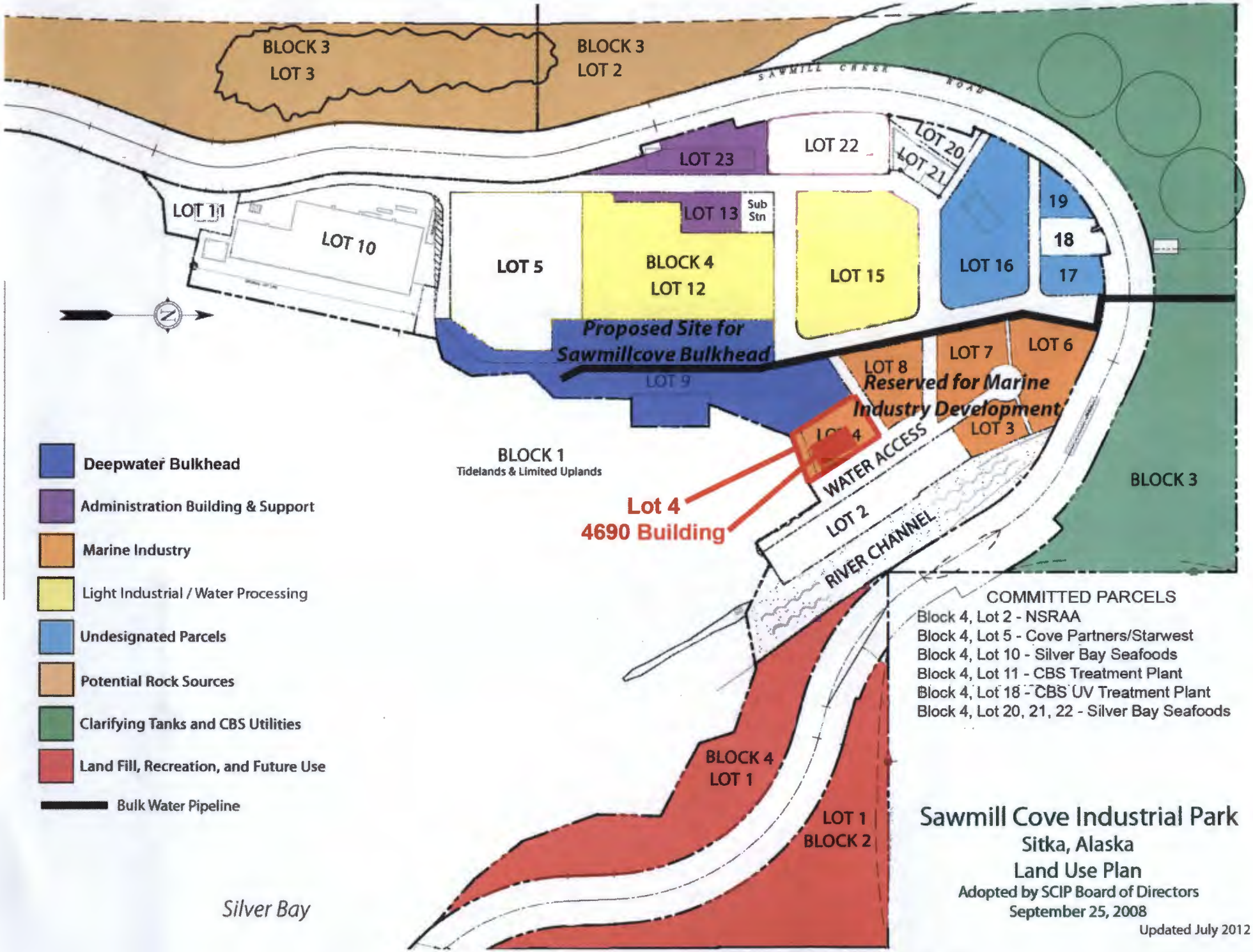
DWN BY MC/AJJ
DATE 18 April '01
SCALE 1/8" = 1'
Office Finishes
REV. 26 Apr '01

The Boat Company
Sawmill Cove Industrial Site
4600 Sawmill Creek Road
Sitka, Alaska

D.G. JONES ASSOCIATES
Box 3169
Sitka, Alaska 99835
(907) 747-7798
(907) 747-7799 (fax)
Email: dgjones@gci.net

2 of 4

Auto Distribution: D.G. Jones/Associates 4/18/01 2:09 PM 2 Rev. 1 and 3 Rev. 1 of 4 dwg


BLOCK 3
LOT 3
BLOCK 3
LOT 2
SAWMILL CREEK ROAD
LOT 23
LOT 22
LOT 20
LOT 21
LOT 11
LOT 10
LOT 13
Sub Stn
LOT 5
BLOCK 4
LOT 12
LOT 15
LOT 16
19
18
17
Proposed Site for Sawmillcove Bulkhead
LOT 9
LOT 8
LOT 7
LOT 6
Reserved for Marine Industry Development
LOT 3
BLOCK 1
Tidelands & Limited Uplands
Lot 4
4690 Building
WATER ACCESS
LOT 2
RIVER CHANNEL
BLOCK 3
Deepwater Bulkhead
Administration Building & Support
Marine Industry
Light Industrial / Water Processing
Undesignated Parcels
Potential Rock Sources
Clarifying Tanks and CBS Utilities
Land Fill, Recreation, and Future Use
Bulk Water Pipeline
COMMITTED PARCELS
Block 4, Lot 2 - NSRAA
Block 4, Lot 5 - Cove Partners/Starwest
Block 4, Lot 10 - Silver Bay Seafoods
Block 4, Lot 11 - CBS Treatment Plant
Block 4, Lot 18 - CBS UV Treatment Plant
Block 4, Lot 20, 21, 22 - Silver Bay Seafoods
BLOCK 4
LOT 1
LOT 1
BLOCK 2
Silver Bay
Sawmill Cove Industrial Park
Sitka, Alaska
Land Use Plan
Adopted by SCIP Board of Directors
September 25, 2008
Updated July 2012

City and Borough of Sitka
Sawmill Creek Industrial Park Fund
12-Month Income Statement

	270	780	781	Combined
Operating Revenue	97,758	-	-	97,758
Grant Revenue	-	-	135,562	135,562
Sale of Fixed Assets	65,560	-	-	65,560
Transfer From Contingency	22,033	-	-	22,033
Other Revenue	10,952	-	-	10,952
Interest Income	9,389	-	-	9,389
Total Revenue	**205,692**	**-**	**135,562**	**341,254**
Op Exp	269,357	-	-	269,357
Depr	227,222	-	-	227,222
Interest	13,085	-	-	13,085
Other Exp	-	-	-	-
Total Expenses	**509,664**	**-**	**-**	**509,664**
Net Income	**(303,972)**	**-**	**135,562**	**(168,410)**

City and Borough of Sitka
Sawmill Creek Industrial Park Fund
June 30, 2012 Adjusted Accrual Basis Balance Sheet

Adjusted Combined Balance Sheet

	270	780	781	Combined
Cash	411,761	63,519	10,881	486,161
A/R	81,308	-	-	81,308
Inventory	-	-	-	-
PPd Exp	463	-	-	463
Total Current Assets	**493,532**	**63,519**	**10,881**	**567,932**
PP&E	10,631,772	151,152	2,387,697	13,170,621
Other	45,876	-	-	45,876
Total Non-current Assets	**10,677,648**	**151,152**	**2,387,697**	**13,216,497**
Total Assets	**11,171,180**	**214,671**	**2,398,578**	**13,784,429**
A/P	5,333	-	-	5,333
CPLTD	-	-	32,209	32,209
Other	150,000	-	-	150,000
Current	155,333	-	32,209	187,542
Notes Pbl	(32,210)	-	289,879	257,669
Other	114,887	-	-	114,887
Non-Current	82,677	-	289,879	372,556
Total Liabilities	**238,010**	**-**	**322,088**	**560,098**
Equity	**10,933,170**	**214,671**	**2,076,490**	**13,224,331**
Total Liabilities and Equity	**11,171,180**	**214,671**	**2,398,578**	**13,784,429**

City and Borough of Sitka
Sawmill Cove Industrial Park
Income Statement
For The Twelve-Month Period From July 1, 2011 to June 30, 2012
(Unaudited)

	July 2011	August 2011	September 2011	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012	FY2012 YTD
Revenue:													
Leases	8,147.00	8,147.00	8,147.00	8,147.00	8,147.00	8,147.00	8,146.00	8,146.00	8,146.00	8,146.00	8,146.00	8,146.00	97,758.00
Other Operating Revenue	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenue:	**8,147.00**	**8,147.00**	**8,147.00**	**8,147.00**	**8,147.00**	**8,147.00**	**8,146.00**	**8,146.00**	**8,146.00**	**8,146.00**	**8,146.00**	**8,146.00**	**97,758.00**
Cost of Sales:													
Operations	13,497.00	11,449.00	36,709.00	15,816.00	17,179.00	18,052.00	43,433.00	13,715.00	13,068.00	42,592.00	14,599.00	29,247.00	269,356.00
Depreciation	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,893.00	18,894.00	18,894.00	18,893.00	227,222.00
Total Cost of Sales:	32,453.00	30,405.00	55,665.00	34,772.00	36,135.00	37,008.00	62,389.00	32,671.00	31,961.00	61,486.00	33,493.00	48,140.00	496,578.00
Gross Margin:	**(24,306.00)**	**(22,258.00)**	**(47,518.00)**	**(26,625.00)**	**(27,988.00)**	**(28,861.00)**	**(54,243.00)**	**(24,525.00)**	**(23,815.00)**	**(53,340.00)**	**(25,347.00)**	**(39,994.00)**	**(398,820.00)**
	-298.34%	**-273.20%**	**-583.26%**	**-326.81%**	**-343.54%**	**-354.25%**	**-665.89%**	**-301.07%**	**-292.35%**	**-654.80%**	**-311.16%**	**-490.96%**	**-407.97%**
Selling and Administrative Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Earnings Before Interest and Taxes (EBIT):	**(24,306.00)**	**(22,258.00)**	**(47,518.00)**	**(26,625.00)**	**(27,988.00)**	**(28,861.00)**	**(54,243.00)**	**(24,525.00)**	**(23,815.00)**	**(53,340.00)**	**(25,347.00)**	**(39,994.00)**	**(398,820.00)**
	-298.34%	**-273.20%**	**-583.26%**	**-326.81%**	**-343.54%**	**-354.25%**	**-665.89%**	**-301.07%**	**-292.35%**	**-654.80%**	**-311.16%**	**-490.96%**	**-407.97%**
Non-operating Revenue and Expense:													
Interest and Non-Operating Revenue:	793.00	793.00	793.00	387.00	367.00	659.00	940.00	912.00	1,461.00	929.00	973.00	11,334.00	20,341.00
Sale of Property	-	-	-	-	-	-	-	-	-	-	-	65,560.00	65,560.00
Grant Revenue:	-	-	81,057.00	-	-	1,487.00	-	-	-	53,018.00	-	-	135,562.00
Interest Transfer From SMC Contingency	1,901.00	1,901.00	1,901.00	1,775.00	1,783.00	1,804.00	1,834.00	1,811.00	1,821.00	1,857.00	1,850.00	1,795.00	22,033.00
Interest Expense:	(1,090.00)	(1,090.00)	(1,090.00)	(1,090.00)	(1,090.00)	(1,090.00)	(1,090.00)	(1,090.00)	(1,091.00)	(1,091.00)	(1,092.00)	(1,092.00)	(13,086.00)
Total Non-operating Revenue & Expense:	1,604.00	1,604.00	82,661.00	1,072.00	1,060.00	2,860.00	1,684.00	1,633.00	2,191.00	54,713.00	1,731.00	77,597.00	230,410.00
Net Income:	(22,702.00)	(20,654.00)	35,143.00	(25,553.00)	(26,928.00)	(26,001.00)	(52,559.00)	(22,892.00)	(21,624.00)	1,373.00	(23,616.00)	37,603.00	(168,410.00)
	-278.65%	**-253.52%**	**431.36%**	**-313.65%**	**-330.53%**	**-319.15%**	**-645.21%**	**-281.02%**	**-265.46%**	**16.85%**	**-289.91%**	**461.61%**	**-172.27%**
Earnings Before Interest and Taxes and Depreciation (EBITDA):	**(5,350.00)**	**(3,302.00)**	**(28,562.00)**	**(7,669.00)**	**(9,032.00)**	**(9,905.00)**	**(35,287.00)**	**(5,569.00)**	**(4,922.00)**	**(34,446.00)**	**(6,453.00)**	**(21,101.00)**	**(171,598.00)**
	-65.67%	**-40.53%**	**-350.58%**	**-94.13%**	**-110.86%**	**-121.58%**	**-433.18%**	**-68.36%**	**-60.42%**	**-422.86%**	**-79.22%**	**-259.04%**	**-175.53%**
Debt Principal Coverage													
Simple Cash Flow (Net Income Plus Depreciation)	(3,746.00)	(1,698.00)	54,099.00	(6,597.00)	(7,972.00)	(7,045.00)	(33,603.00)	(3,936.00)	(2,731.00)	20,267.00	(4,722.00)	56,496.00	58,812.00
Debt Principal	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	2,684.00	32,208.00
Debt Principal Coverage Surplus/Deficit	(6,430.00)	(4,382.00)	51,415.00	(9,281.00)	(10,656.00)	(9,729.00)	(36,287.00)	(6,620.00)	(5,415.00)	17,583.00	(7,406.00)	53,812.00	26,604.00
Debt Principal Coverage Percentage	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Simple Asset Replacement Coverage													
Debt Principal Coverage Surplus/Deficit (From Above)	(6,430.00)	(4,382.00)	51,415.00	(9,281.00)	(10,656.00)	(9,729.00)	(36,287.00)	(6,620.00)	(5,415.00)	17,583.00	(7,406.00)	53,812.00	26,604.00
Depreciation	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,956.00	18,893.00	18,894.00	18,894.00	18,893.00	227,222.00
Cash Accumulated For/(Taken From) Asset Replacement	(25,386.00)	(23,338.00)	32,459.00	(28,237.00)	(29,612.00)	(28,685.00)	(55,243.00)	(25,576.00)	(24,308.00)	(1,311.00)	(26,300.00)	34,919.00	(200,618.00)
Working Capital													
Beginning Undesignated Working Capital	323,430.00	317,000.00	312,618.00	282,976.00	273,695.00	263,039.00	251,823.00	215,536.00	208,916.00	203,501.00	168,066.00	160,660.00	323,430.00
Net Income Plus Depreciation less Principal Payments	(6,430.00)	(4,382.00)	(29,642.00)	(9,281.00)	(10,656.00)	(11,216.00)	(36,287.00)	(6,620.00)	(5,415.00)	(35,435.00)	(7,406.00)	53,812.00	(108,958.00)
Accruals and other Balance Sheet Changes	-	-	-	-	-	-	-	-	-	-	-	86,339.00	86,339.00
Ending Undesignated Working Capital	317,000.00	312,618.00	282,976.00	273,695.00	263,039.00	251,823.00	215,536.00	208,916.00	203,501.00	168,066.00	160,660.00	300,811.00	300,811.00
Beginning Working Capital Designated for CapEx	333,561.00	192,684.00	192,684.00	267,297.00	267,297.00	267,297.00	268,784.00	266,926.00	266,926.00	216,487.00	265,439.00	265,439.00	333,561.00

CITY AND BOROUGH OF SITKA

100 Lincoln Street,
Sitka, Alaska 99835

Legislation Details

File #:	12-127	**Version:**	1	**Name:**	
Type:	Item			**Status:**	AGENDA READY
File created:	9/5/2012			**In control:**	City and Borough Assembly
On agenda:	9/11/2012			**Final action:**	9/11/2012
Title:	Approve a Utility Services Agreement between DOT&PF and CBS for $639,835 including a transfer of $90,000 from Project 90652 to Project 90673				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Utilty Reimbursable Services Agreement				

Date	Ver.	Action By	Action	Result
9/11/2012	1	City and Borough Assembly	APPROVED	Pass

powered by Legistar™

MEMORANDUM

To: Mayor Westover and Members of the Assembly
Jim Dinley, Municipal Administrator

From: Michael Harmon, Public Works Director
Stephen L. Weatherman, P.E. Municipal Engineer

Reviewed: Jay Sweeney, Finance Director

Date: September 5, 2012

Subject: Utility Reimbursable Services Agreement for Halibut Point Road Upgrade

Background:

The State of Alaska Department of Transportation and Public Facilities (DOTPF) are upgrading the portion of Halibut Point Road between the Roundabout to the end of the road near the Forest Service Campground. The upgrade includes several improvements requested by the City and Borough of Sitka (CBS) along with moving the water lines onto the new bridges to be constructed at Cascade Creek and No Name Creek. DOTPF has prepared a Utility Reimbursable Services Agreement to construct these facilities within the DOTPF right of way.

Analysis:

The Water Enterprise Fund has been planning for these improvements for several years while waiting for the DOTPF to move the project to construction. CBS has retained the services of Carson Dorn to prepare the designs for inclusion of the DOTPF plans for the Halibut Point Project. The water lines are currently located under the streams and subject to erosion which exposes the water lines occasionally. This requires Corp of Engineers and Fish and Game permits to rebury the lines when exposed. While exposed the lines are subject to failure because they are not supported by being buried in a trench. The project includes adding a fire hydrant near Bahovec Court and a new 6 inch water service to replace the existing water service because the water main is being relocated out of the stream.

Fiscal Note:

The project has a FY 11 Water Fund Capital Project allocation of $300,000 and a FY 13 Water Fund Capital Project allocation of $300,000. The total project has a budget of

$690,000 including design and engineering. To fund the total project budget transfer $90,000 from project 90652 to project 90673.

Recommendation:

Transfer $90,000 from Project 90652 to Project 90673. Approve the Utility Reimbursable Services Agreement between DOT&PF and CBS for $639,835 and direct the Administrator to execute the agreement.

25D-256 (10/93)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

UTILITY CHANGE ORDER

Region: **Southeast**

Change Order No.: **1**

Project No.: **69351**
Sitka Halibut Point Road Pavement Rehabilitation
RSA Sitka Water and Sewer Upgrade

Utility Work Order No.: **N/A**

RSA No.: **3-67403-12-08**

Utility Reimbursable Services Agreement No. **3-67403-12-08** is hereby modified in the manner described below. This change document is supplemental to the above RSA, which is, by reference made a part hereof. All terms, conditions and provisions of the RSA, except as specifically modified herein, remain un-changed and in full force and effect.

****

Acceptance of this Change Order constitutes agreement to the terms, conditions, and prices stated:

ACCEPTED:

City and Borough of Sitka

_____
Utility Representative

_____
Title

_____
Printed Name

Date: _____

NOTE: FHWA Approval Required
YES ☐
NO ☒

RECOMMENDED FOR APPROVAL:

_____
Regional Utilities Engineer

Date:_____

APPROVED:

_____
Regional Preconstruction Engineer

Date: _____

FEDERAL HIGHWAY ADMINISTRATION

APPROVED: (When Applicable)

By:_____

Title:_____

Printed:_____

Date:_____

****

CONTINUATION SHEET FOR:
UTILITY CHANGE ORDER NO. 1

DESCRIPTION AND REASON FOR CHANGE

Utility Reimbursable Services Agreement No. 3-67403-12-08 between City and Borough of Sitka and the Department of Transportation for the Sitka Halibut Point Road Pavement Rehabilitation project is hereby modified as follows:

This change is to document the addition of relocating water and sewer facilities as illustrated in the attached estimate, plans and specifications included in this change order as Exhibits A, B and C respectively.

Change in costs for State Work for Utility		
Water and Sanitary Sewer Relocation 628(1)-(7.1)	415,100	
Cascade Creek Bridge Modifications 628(30), (31)	30,000	
Total Item No. 628		445,100
Incidental Items		
Mobilization/Demobilization 640(1), (4)	45,266	
Erosion, Sediment and Pollution Control 641(1), (3), (4)	2,403	
Traffic Maintenance 643(2), (3), (15), (25)	20,786	
Total Incidental Items		68,455
Construction Engineering @ 15%	77,033	
Total CE		77,033
ICAP @ 4.79%	28,289	
Total ICAP		28,289
TOTAL CHANGE IN CONSTRUCTION COSTS		**618,877**

REVISION TO EXHIBIT "A"
SUMMARY OF ESTIMATE FOR ADJUSTMENT OF FACILITIES REQUIRED BY HIGHWAY CONSTRUCTION

The **City and Borough of Sitka** estimate of work and materials required in connection with Project No.: **69351**
Project Name: **Halibut Point Road Rehab and Drainage Improvements** RSA No.: **3-67403-12-08**

	UTILITY COST NON-REIMBURS.	PREVIOUS CHANGE	NET CHANGE THIS DOCUMENT	TOTALS
PART I. UTILITY WORK				
57754-RIGHT OF WAY (Acquisition Only)				
Preliminary Engineering				$ -
Preliminary Engineering Overhead				$ -
57718-TOTAL PRELIMINARY ENGINEERING	$ -		$ -	$ -
Construction Engineering				$ -
Construction Engineering Overhead				$ -
57325-TOTAL CONSTRUCTION ENGINEERING	$ -		$ -	$ -
Construction Labor				$ -
Materials & Supplies				$ -
Material Handling Charges				$ -
Transportation & Equipment				$ -
Contract Construction				$ -
Miscellaneous Expenses				$ -
Construction Subtotal	$ -		$ -	$ -
Construction Overhead				$ -
GROSS CONSTRUCTION COSTS	$ -	$ -	$ -	$ -
Credits				$ -
Salvage & Scrap				$ -
Betterments				$ -
TOTAL CREDITS				$ -
57324-NET CONSTRUCTION COSTS	$ -	$ -	$ -	$ -
DOL/WD Fee				$ -
TOTAL UTILITY WORK	$ -	$ -	$ -	$ -
PART II. STATE WORK FOR UTILITY				$ -
Preliminary Engineering	$ 20,000			$ 20,000
Contract Construction			$ 513,555	$ 513,555
Construction Engineering @ 15%			$ 77,033	$ 77,033
ICAP @ 4.79%	$ 958		$ 28,289	$ 29,247
TOTAL STATE WORK FOR UTILITY	$ 20,958		$ 618,877	$ 639,835
TOTAL EST. RELOCATION COSTS (Parts I & II)	$ 20,958		$ 618,877	$ 639,835

UTILITY CONCURRENCE, BY: _____ SUBMITTED BY: _____

DATE: _____ TITLE: Utility Agreement Writer

SIT-HALIBUT POINT ROAD WATER AND SEWER UPGRADE RSA NO. 67403
ENGINEER'S ESTIMATE July 24, 2012

					UNIT PRICE		AMOUNT	
Item No.	CBS Spec Section	Pay Item Description	Pay Unit	APPROX. QUANTITY	DOLLARS	CENTS	DOLLARS	CENTS
628 (1)	20.16	Sheeting, Shoring and Bracing	Lump Sum	All Req'd	Lump	Sum	$10,000	
~~628 (2.1)~~	~~50.02~~	~~Furnish and Install Granite Creek Bridge Sewer Force Main Pipe~~	~~Lump Sum~~	~~All Req'd~~	~~Lump~~	~~Sum~~	~~$150,000~~	
628 (4.1)	60.02	Furnish and Install 6" Ductile Iron Water Line	Linear Foot	80	$50		$4,000	
628 (4.2)	60.02	Furnish and Install 12" Ductile Iron Water Line	Linear Foot	540	$90		$48,600	
628 (4.3)	60.02	Furnish and Install Cascade Creek Bridge Water Distribution Pipe	Lump Sum	All Req'd	Lump	Sum	$170,000	
~~628 (4.4)~~	~~60.02~~	~~Furnish and Install Granite Creek Bridge Water Distribution Pipe~~	~~Lump sum~~	~~All Req'd~~	~~Lump~~	~~Sum~~	~~$200,000~~	
628 (4.5)	60.02	Furnish and Install No-Name Creek Bridge Water Distribution Pipe	Lump Sum	All Req'd	Lump	Sum	$170,000	
628 (5.1)	60.03	Furnish and Install 6" Gate Valve and Valve Box	Each	1	$1,500		$1,500	
628 (5.2)	60.03	Furnish and Install 12" Gate Valve and Valve Box	Each	1	$2,500		$2,500	
628 (6.1)	60.04	Furnish and Install Fire Hydrant Assembly	Each	1	$4,500		$4,500	
628 (7.1)	60.06	Furnish and Install 1" Water Sampling Station with HDPE Line	Each	1	$4,000		$4,000	

TOTAL BID $ ~~765,100~~ 415,100

25D-256B (12/95)

Incidental Items
Uitlity Reimbursable Service Agreement No: 3-67403-12-08

Project No.: 69351 / RSA 67403

Project Termini: Sitka Halibut Point Road Pavement Rehabilitation
RSA Sitka Water and Sewer Upgrades

ITEM No.	Description	Quantity*	Price
640(1)	Mobilization and Demobilization	8.97%	$ 39,925
640(4)	Worker Meals and Lodging, or Per Diem	1.20%	$ 5,341
641(1)	Erosion and Pollution Control Administration	0.18%	$ 801
641(3)	Temporary Erosion and Pollution Control	0.30%	$ 1,335
641(4)	Temporary Erosion and Pollution Control Additive	0.06%	$ 267
643(2)	Traffic Maintenance	1.20%	$ 5,341
643(3)	Permanent Construction Signs	0.18%	$ 801
643(15)	Flagging	2.09%	$ 9,303
643(25)	Traffic Control	1.20%	$ 5,341

$ 68,455

PREAPARED BY:

_____ Date: _____

*Quantity as a percentage of water and sewer relocation costs. The percentages will be adjusted through a change order to reflect actual bid amounts after the project is awarded.The percentage was obtained using the ratio of the item cost and total project costs.

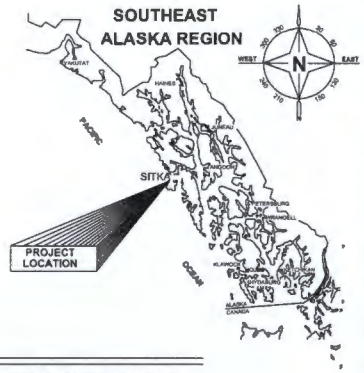
State of Alaska

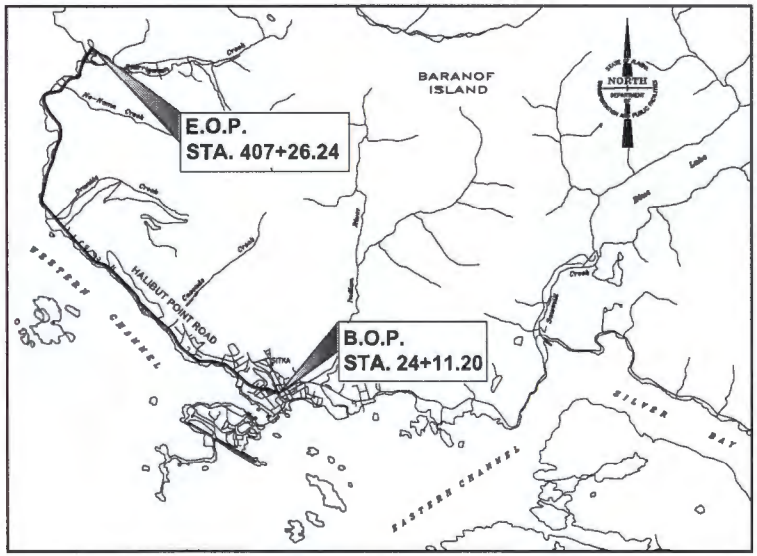
Department of Transportation and Public Facilities Southeast Region

SITKA, ALASKA
HALIBUT POINT ROAD

PAVEMENT REHABILITATION & DRAINAGE IMPROVEMENTS
HPP-0993(19)~69351

SITKA WATER AND SEWER UPGRADE
RSA #67403





VICINITY MAP

DESIGN DESIGNATION

A.D.T. 2011	=	13,210
A.D.T. 2031	=	14,590
D.H.V. (10.8%) 2030	=	1438
% T	=	4.0%
V	=	30-45 M.P.H.
E.A.L.	=	750,000

PROJECT SUMMARY

LENGTH OF PROJECT	=	7.31 MILES
LENGTH OF PAVING	=	7.31 MILES
WIDTH OF PAVING	=	28.5-36 FT

THE FOLLOWING STANDARD DRAWINGS APPLY TO THIS PROJECT:

A-1	D-22.01	E-13.00	G-25.21W	S-00.11	T-06.00
C-03.10	D-23.01	G-00.02	G-30.00	S-01.00	T-20.03
C-04.12	D-24.00	G-04.06S	G-31.00	S-05.01	T-21.03
C-05.20	D-26.02	G-04.07W	I-20.14	S-20.10	T-22.03
D-01.02	D-35.00	G-10.01	I-21.02	S-23.00	T-23.00
D-04.21	D-36.00	G-13.00	I-81.00	S-30.03	
D-20.03		G-20.11	M-16.01		

THE FOLLOWING CBS STANDARD DETAILS APPLY TO THIS PROJECT:

20-7	50-1	50-6	50-11	60-2	60-8
20-8	50-2	50-7	50-12	60-3	60-11
20-9	50-3	50-8	50-13	60-4	70-1
30-6	50-4	50-9	50-14	60-6	70-2
40-1	50-5	50-10		60-7	70-5

INDEX

SHEET NO.	DESCRIPTION
A1	TITLE SHEET
A2-A6	SURVEY CONTROL PLAN
A7	PROJECT ALIGNMENT TABLE
A8	EAGLES NEST LOCATIONS
B1-B5	TYPICAL SECTIONS
C1	ESTIMATE OF QUANTITIES
D1-D7	SUMMARIES
E1-E5	MISCELLANEOUS DETAILS
F1-F37	PLAN VIEW
G1-G3	INTERSECTIONS & DRIVEWAYS
H1-H40	SIGNING & STRIPING PLANS
N1-NX	BRIDGE PLANS & SOIL TEST HOLE LOGS
M1-M2	TEMPORARY CROSSING PLAN & PROFILE
P1-P2	EROSION & SEDIMENT CONTROL DETAILS
Q1-Q5	DRAINAGE DETAILS
T1-T2	TRAFFIC CONTROL PLANS
U1-U9	UTILITIES

ROUTE:	295400	MILEPOINT:	0.047 TO 7.316

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PLOT: PSPACE OR MSPACE: 1=1(F)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

STATE OF ALASKA
49TH
Keith D. Karpstein
CE-12904

APPROVED:

REGIONAL PRE-CONSTRUCTION ENGINEER — DATE
CHUCK CORREA, P.E.

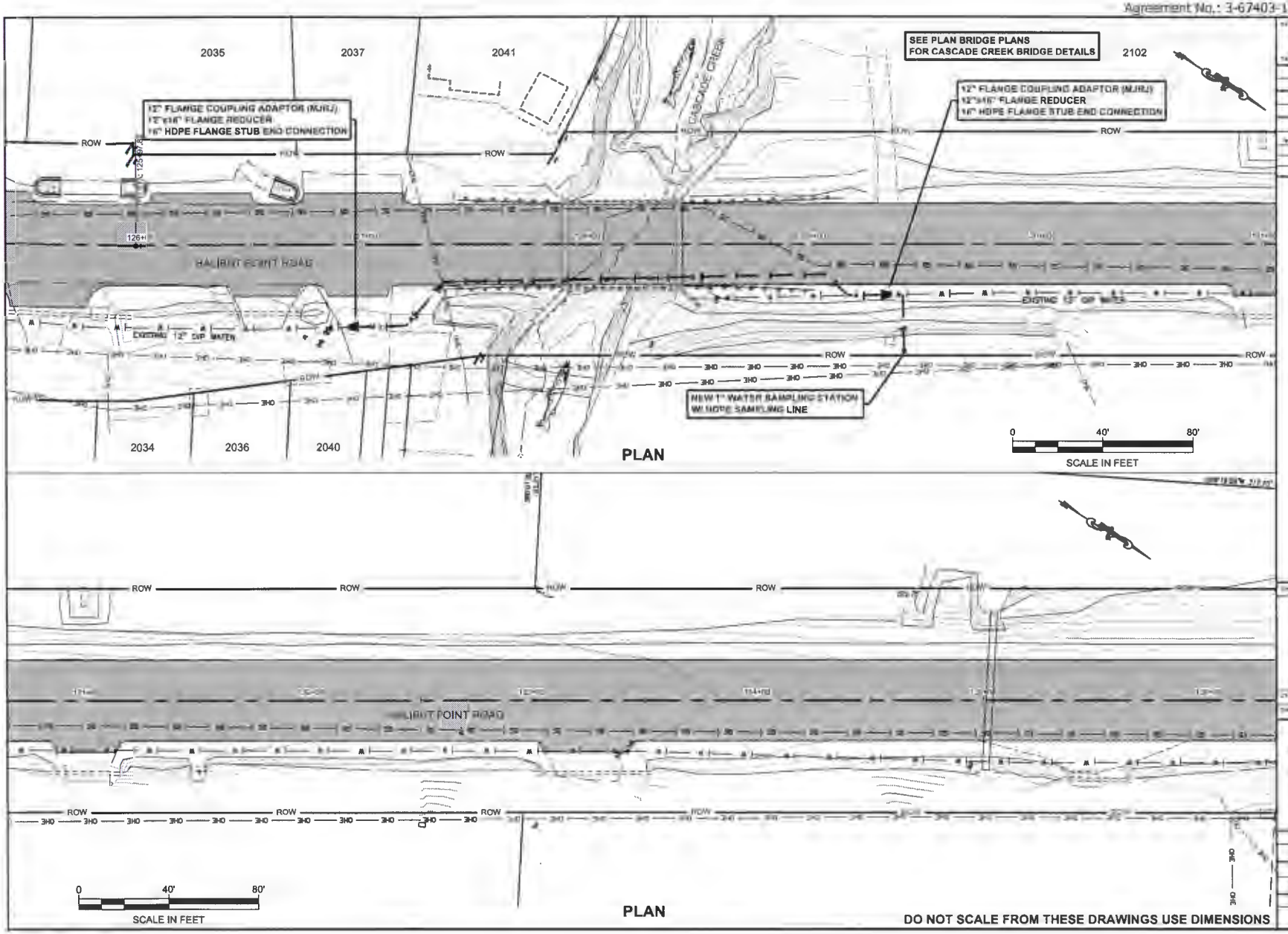
APPROVED:

DIRECTOR, SOUTHEAST REGION — DATE
ALBERT H. CLOUGH, CPG

CERTIFIED TRUE & CORRECT AS-BUILT OF ACTUAL FIELD CONDITION:

CONSTRUCTION PROJECT MANAGER — DATE

STATE	PROJECT DESIGNATION	YEAR	SHEET NO.	TOTAL SHEETS
ALASKA	HPP-0993(19)~69351	2012	A1	x



CASCADE CREEK UTILITIES

SIT-HALIBUT POINT ROAD
PAVEMENT REHABILITATION
PROJECT #69351

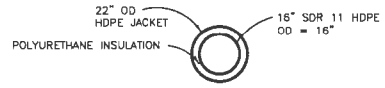
SIT-WATER AND SEWER
UPGRADE
RSA NO. 67403

HPP-0993(19)-69351

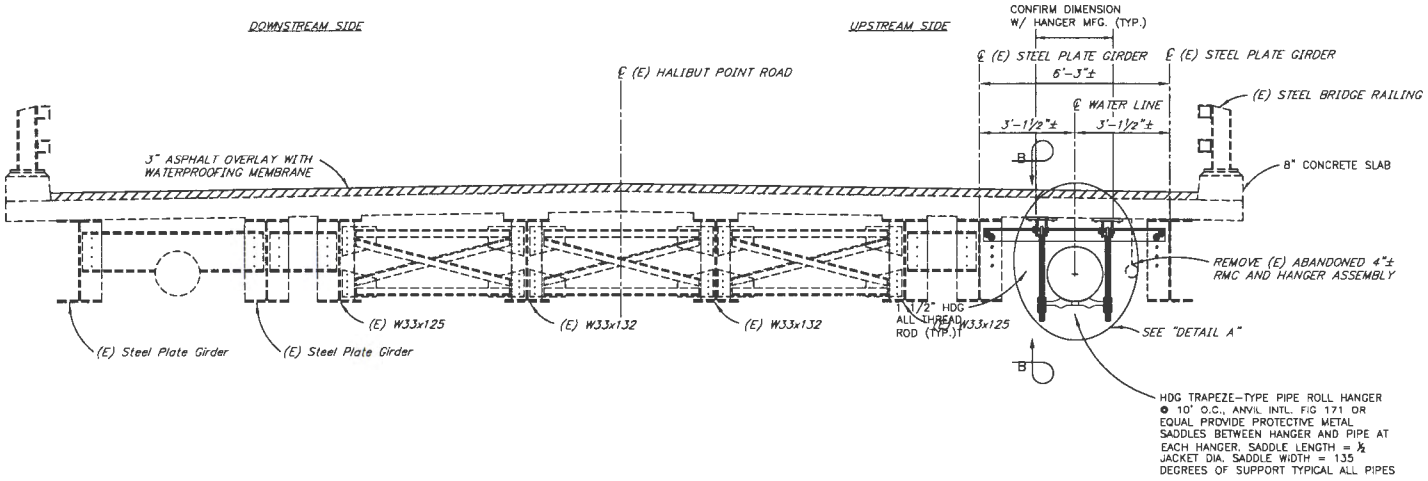
STATE	YEAR
ALASKA	2012
U1	XX

NOTES:

1. LOCATE INSERTS FOR PIPE HANGERS AND SWAY BRACING PER THE PIPE HANGER MANUFACTURER'S RECOMMENDATIONS AND DIMENSIONS.
2. INSERTS FOR PIPE HANGERS AND SWAY BRACING TO BE FOR 1 ½" DIAMETER THREADED ROD AND TO HAVE A SAFE WORKING LOAD OF 3,500 LBS.
3. INSTALL INSERTS FOR SWAY BRACING ON SAME LONGITUDINAL ALIGNMENT AS INSERTS FOR PIPE HANGERS.
4. SECURE ALL NUTS AND THREADED ROD CONNECTIONS WITH A THREADED LOCKING SYSTEM.
5. SEE SHEET U9 FOR PIPE SUPPORT AND SWAY BRACING SPACING.



WATER DISTRIBUTION
INSULATED PIPE



CASCADE CREEK BRIDGE TYPICAL CROSS SECTION

12 8 0 1 2 3 4
In. Feet

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

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ADMINISTRATOR
TAB: U2 Monday, July 24, 2012 4:37:29 PM

ADDENDUM NUMBER

ATTACHMENT NUMBER

RECORD OF REVISIONS

No.	DATE	DESCRIPTION

CASCADE CREEK BRIDGE CROSSING SECTIONS

CHECKED BY:

STATE OF ALASKA
JAMES L. BORN
CE 9363
PROFESSIONAL ENGINEER

DESIGNED BY:

DRAWN BY:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

SIT-WATER AND SEWER UPGRADE RSA NO. 67403

PROJECT DESIGNATION
HPP-0993(19)-69351

STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U2	XX

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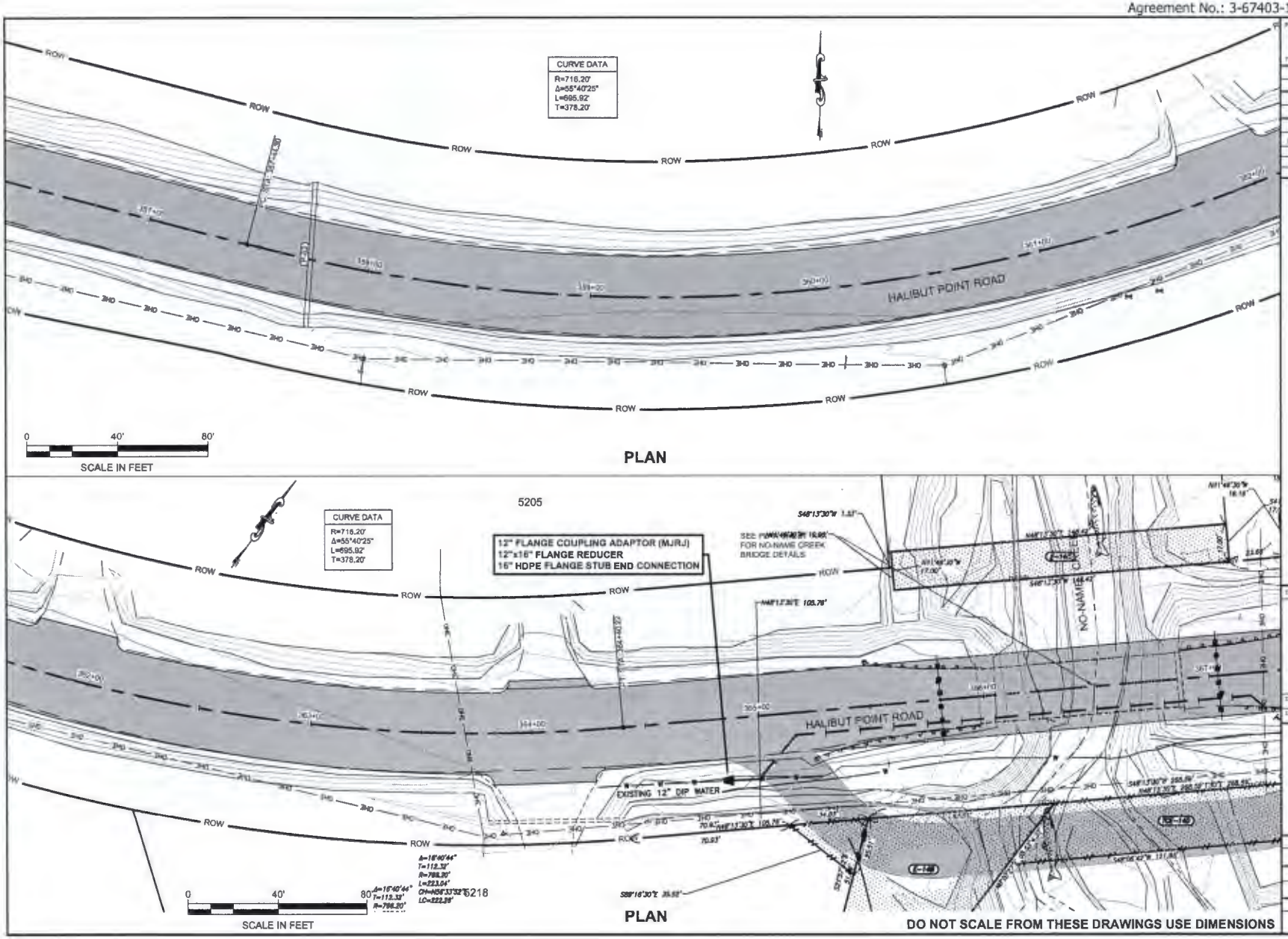
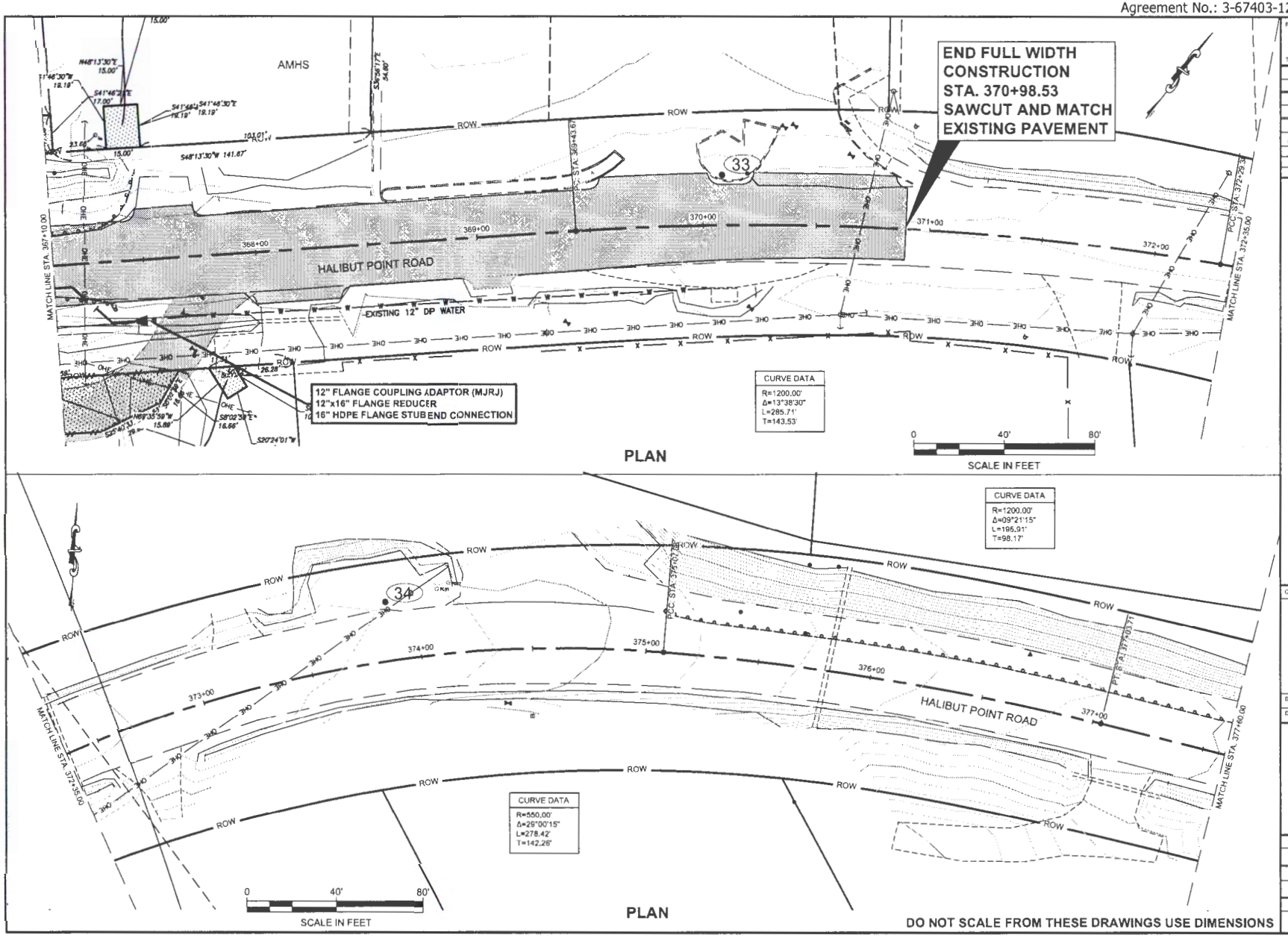


NO NAME CREEK UTILITIES

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

SIT-WATER AND SEWER UPGRADE RSA NO. 67403

PROJECT DESIGNATION	
HPP-0993(19)-69351	
STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U5	XX



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ADDENDUM NUMBER

ATTACHMENT NUMBER

RECORD OF REVISIONS

No.	DATE	DESCRIPTION

NO NAME CREEK UTILITIES

CHECKED BY:

DESIGNED BY:

DRAWN BY:

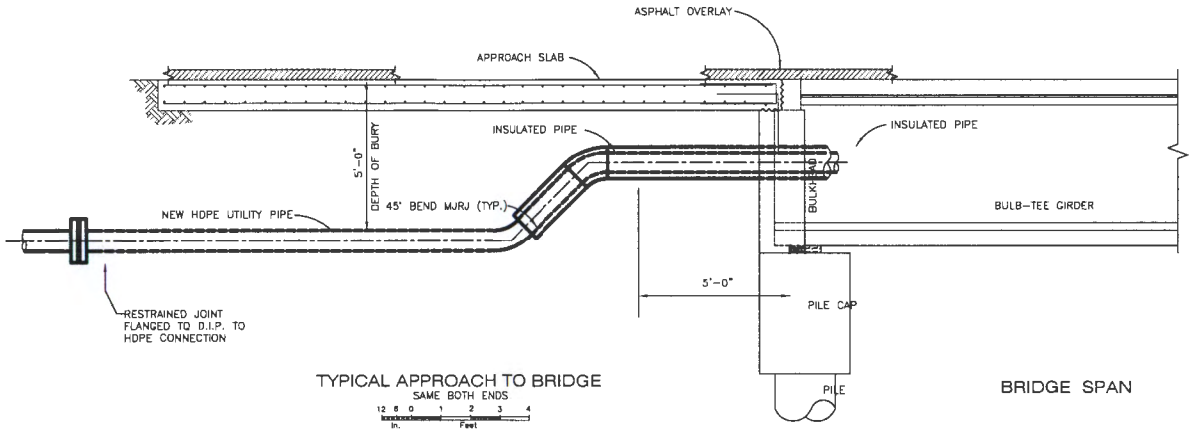
STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

SIT-WATER AND SEWER UPGRADE RSA NO. 67403

PROJECT DESIGNATION
HPP-0993(19)~69351

STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U6	XX

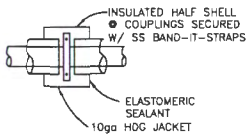


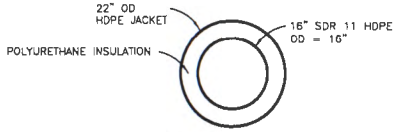
TYPICAL APPROACH TO BRIDGE
SAME BOTH ENDS

BRIDGE SPAN

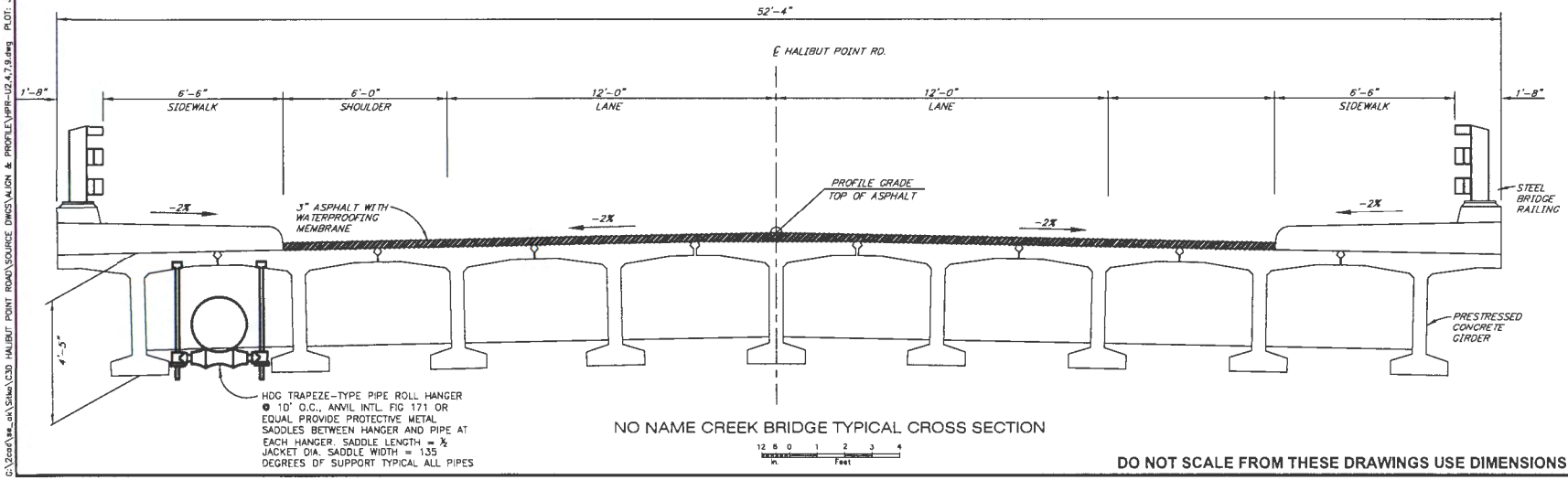
NOTES:

1. LOCATE INSERTS FOR PIPE HANGERS AND SWAY BRACING PER THE PIPE HANGER MANUFACTURER'S RECOMMENDATIONS AND DIMENSIONS.
2. INSERTS FOR PIPE HANGERS AND SWAY BRACING TO BE FOR 1 ½" DIAMETER THREADED ROD AND TO HAVE A SAFE WORKING LOAD OF 3,500 LBS.
3. INSTALL INSERTS FOR SWAY BRACING ON SAME LONGITUDINAL ALIGNMENT AS INSERTS FOR PIPE HANGERS.
4. SECURE ALL NUTS AND THREADED ROD CONNECTIONS WITH A THREADED LOCKING SYSTEM.
5. SEE SHEET NUB 1 FOR PIPE SUPPORT AND SWAY BRACING SPACING.





WATER DISTRIBUTION INSULATED PIPE



NO NAME CREEK BRIDGE TYPICAL CROSS SECTION

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

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ADMINISTRATOR
TAB: U7 Monday, July 24, 2012 4:37:29 PM

ADDENDUM NUMBER

ATTACHMENT NUMBER

RECORD OF REVISIONS

No.	DATE	DESCRIPTION

NO NAME CREEK BRIDGE CROSSING SECTIONS

CHECKED BY:

DESIGNED BY:

DRAWN BY:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
SOUTHEAST REGION

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

SIT-WATER AND SEWER UPGRADE RSA NO. 67403

PROJECT DESIGNATION
HPP-0993(19)~69351

STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U7	XX

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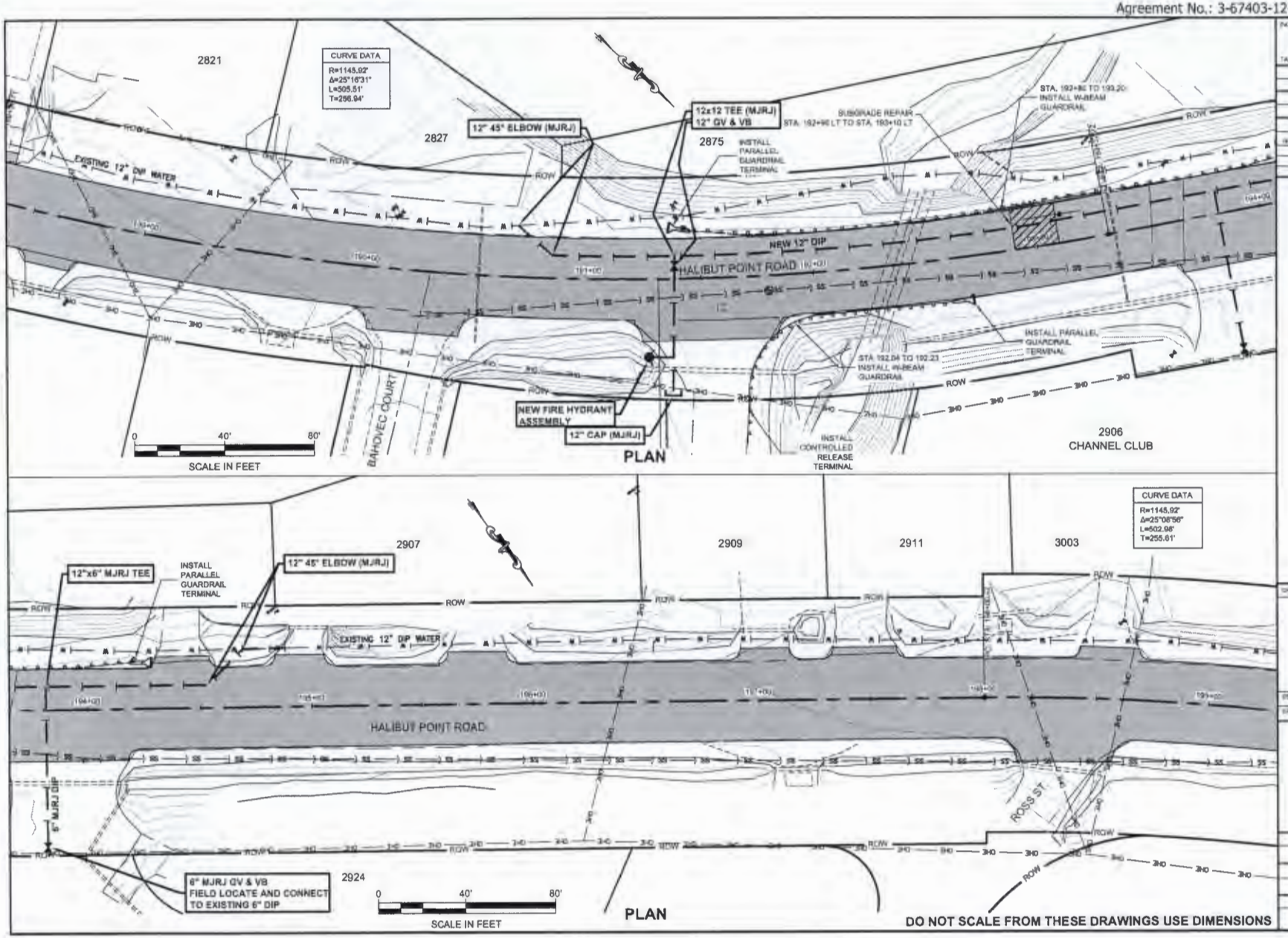


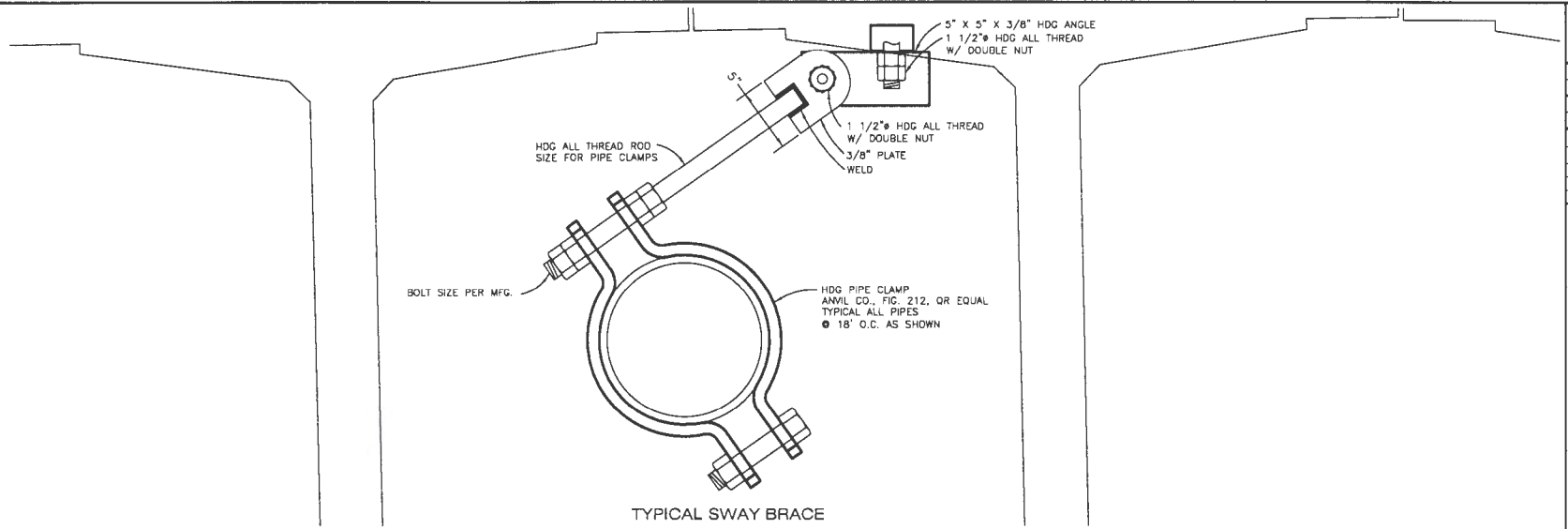
WATER LINE RELOCATION

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
SOUTHEAST REGION

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

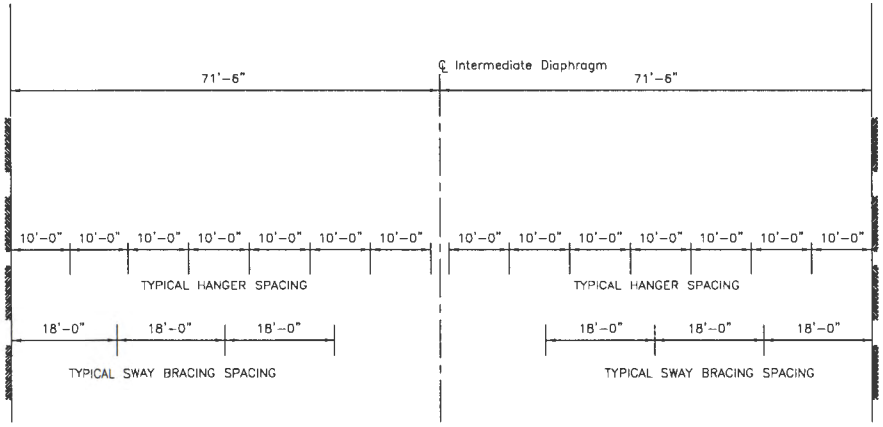
SIT-WATER AND SEWER UPGRADE
RSA NO. 67403

PROJECT DESIGNATION	
HPP-0993(19)-69351	
STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U8	XX



TYPICAL SWAY BRACE

12 0 5 10
In. Feet



HANGER & SWAY BRACING SPACING

10 5 0 10 20
Feet

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

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ADMINISTRATOR
TAB: U9 Monday, July 24, 2012 4:37:29 PM

ADDENDUM NUMBER

ATTACHMENT NUMBER

RECORD OF REVISIONS

No.	DATE	DESCRIPTION

TYPICAL UTILITY BRIDGE HANGER ARRANGEMENT

CHECKED BY:

DESIGNED BY:

DRAWN BY:

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

SIT-HALIBUT POINT ROAD PAVEMENT REHABILITATION PROJECT #69351

SIT-WATER AND SEWER UPGRADE RSA NO. 67403

PROJECT DESIGNATION
HPP-0993(19)~69351

STATE	YEAR
ALASKA	2012
SHEET NUMBER	TOTAL SHEETS
U9	XX

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