

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT SITKA

3 VALORIE L. and CONNOR K.  
4 NELSON, individually, and  
5 KEYSTONE ASSOCIATES, INC.,

6 Plaintiffs,

7 v.

8 CITY AND BOROUGH OF SITKA,  
9 S&S GENERAL CONTRACTORS  
10 and EQUIPMENT RENTAL, INC.,  
11 and JOHN ROGER SUDNIKOVICH,  
12 individually,

13 Defendants.

FILED in the Trial Courts  
State of Alaska, First District  
Sitka

JAN 24 1994

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

No. 1SI-92-440 CI

14 STIPULATION FOR JUDGMENT AND ORDER

15  
16 The above parties have reached agreement in settlement of  
17 their differences. This agreement was reached with assistance of  
18 counsel following a lengthy discussion on January 20, 1994, and  
19 January 21, 1994. Nelson as used herein refers to all plaintiffs,  
20 City, as used herein, refers to the City and Borough of Sitka, and  
21 S&S refers to S&S General Contractors and Equipment Rental, Inc, and  
22 John Roger Sudnikovich. Judgment may be entered on the following  
23 terms:  
24  
25

1  
2 I. Scope of this agreement:

3 The intent of the parties is to resolve all differences  
4 arising out of ownership and use of Lot 1A, U.S. Survey 3670, and  
5 Lots 61A, 62A, and Lots 56A, B, and C, U.S. Survey 3475. This  
6 agreement shall not be construed to apply to any other real  
7 property.

8 The scope of this settlement includes, but is not limited to:  
9 (1) the above entitled case, (2) any pending appeal by plaintiffs  
10 from the Planning and Zoning Commission or Platting Board to the  
11 City & Borough of Sitka Assembly, and any appeal from the Assembly  
12 or the Assembly sitting as a Board of Adjustment to the Superior  
13 Court, and (3) the existing conditional use process for Lot 1A and  
14 the proposed conditional use permit for the rock crusher.

15 The parties agree as follows:

16  
17 1. Hours of Operation:

18 From March through October of each year, S&S General  
19 Contractors (S&S) shall conduct its operations from 7:00 a.m. to  
20 5:30 p.m., Monday through Thursday. From November through February  
21 of each year S&S shall conduct its operations from 7:30 a.m. to 4:30  
22 p.m. Monday through Friday. It is recognized that the demand for  
23 product and weather may vary these hours and days of operation.  
24 These hours do not include the earlier starting of equipment in  
25

1 These hours do not include the earlier starting of equipment in  
2 preparation for work.

3  
4 In the event that S&S obtains the contract for Thompson  
5 Harbor, or in the case of barge activities or any other similar  
6 contracts, these hours and days of operation may be modified.

7 S&S shall employ reasonable efforts to minimize the impact  
8 of its operations on the Nelsons' use and reasonable enjoyment of  
9 their property.

10 S&S will not operate on Sundays except for emergencies and  
11 occasional barge activity.

12 (2) Good Faith:

13  
14 All parties realize that the future needs of S&S's business  
15 is uncertain but that mutual respect for S&S's business needs and  
16 Nelsons' quality of life needs can be made compatible with good  
17 faith effort. For example, S&S will talk with truck drivers hauling  
18 to and from their rock quarry in a way that will eliminate  
19 unnecessary use of compression brakes on their trucks so that noise  
20 will be reduced. These compression brakes are a significant cause  
21 of noise. S&S and Nelson agree that this problem will receive  
22 special attention.

23  
24 (3) Dust:

1  
2 S&S has installed a fog nozzle on their rock crusher for the  
3 purpose of keeping down the dust generated by the rock crusher. S&S  
4 shall maintain this device in good working order so long as the rock  
5 crusher is in operation and shall use reasonable efforts to reduce  
6 the dust. It is understood some dust is inherent in S&S's  
7 operation.

8 (4) Rock Crusher:

9  
10 The rock crusher shall be moved. If S&S does not obtain the  
11 Thomsen Harbor contract then rock will be taken from an area behind  
12 the crusher with the crusher to be moved no later than October 1,  
13 1994. This will permit the rock crusher to be moved back away from  
14 the highway and Nelson's home so that the noise will be reduced.  
15 However, if S&S obtains the Thomsen Harbor contract then the need  
16 will be for shot rock rather than crushed rock and the effect will  
17 be to minimize the use of the rock crusher which would remain in its  
18 present location until the Thomsen Harbor contract is done and to  
19 be moved by August 30, 1995.

20 (5) Truck Traffic:

21  
22 The alleged noise and dust generated by truck traffic related  
23 to S&S business has affected use of Nelson's property and their  
24 enjoyment of their property. S&S will construct a ramp, at their  
25

1 cost, by June 30, 1994, providing more direct access to the AML  
2 barge loading area. This will reduce the trucks going by Nelsons'  
3 property. This ramp will be constructed without regard to whether  
4 or not S&S obtains the Thomsen Harbor job.  
5

6 (6) Future Operation of the Rock Quarry:  
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8 Nelsons would be better able to plan the use of their land  
9 if they knew how long the quarry operation would continue. The  
10 parties have discussed how long it would take to extract rock from  
11 Lot 1A. The estimate of rock available is approximately 500,000  
12 cubic yards. The estimate of how long this will support a  
13 commercial rock quarry depends on the demand. The Thomsen Harbor  
14 job will need approximately 277,000 cubic yards. Without the  
15 Thomsen Harbor contract the demand for rock from S&S's quarry is  
16 uncertain.  
17

18 When all the rock, estimated at 500,000 cubic yards have been  
19 extracted and used, quarry operations on Lot 1A, U.S. Survey 3670  
20 will cease.  
21

22 (7) Noise:  
23

24 The alleged noise from the rock quarry is produced by the  
25 rock crusher, drilling, blasting, equipment, and truck operation.  
The level of noise varies with weather and wind. City and S&S will

1  
2 pay \$9,000.00 to Nelsons for noise remediation by February 27, 1994.

3       **(8) Drilling and Blasting:**

4  
5       All drilling equipment operated by S&S shall have properly  
6 installed and maintained mufflers.

7       S&S shall give 6 hours notice to Nelsons of any blasting of  
8 rock. Notice may be either oral or written. If an emergency exists  
9 or Nelsons are not at home then such good faith efforts of such  
10 notice will be sufficient.

11       **(9) Information Sharing:**

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13       S&S operations are monitored by various government agencies:  
14 Bureau of Mines, OSHA, City & Borough of Sitka, etc. S&S shall give  
15 to Nelsons copies, on request, of these reports that he has so they  
16 may monitor S&S compliance with these standards.

17       It is recognized that Nelsons may contact the regulatory  
18 authorities independently for this information if that information  
19 is not available from and provided by S&S.

20       **(10) Conditional Use Permit:**

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22       S&S shall apply for a Conditional Use Permit for the rock  
23 crusher in addition to the application now pending as to use of Lot  
24 1A for extraction of rock. Nelsons shall not oppose or appeal the  
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1 issuance of the Conditional Use Permits consistent with this  
2 agreement.

3  
4 The City & Borough of Sitka shall monitor and enforce that  
5 use permit, or any other law, in the same manner as with other use  
6 permits.

7 (11) Compliance:

8  
9 S&S operations shall comply with all applicable Federal,  
10 State and local laws and regulations.

11 Parties agree to contact each other before contacting any  
12 governmental agency.

13 (12) Enforcement:

14  
15 The intent of the parties is that this judgment of the  
16 Superior Court be capable of enforcement by either party at any time  
17 in the future that this agreement remains in effect.

18 The procedure to be followed by the parties is that if any  
19 party believes a serious violation has occurred then a petition for  
20 enforcement can be filed with the Superior Court.

21 This petition for enforcement must allege a serious violation  
22 of the judgment.

23 The burden of proof is on the petitioner to show by a  
24 preponderance of the evidence that a serious violation has occurred.

1 A serious violation is one that is continuous and materially  
2 impacts those issues intended to be resolved by this agreement.  
3

4 The petitioner shall give written notice to the other party  
5 detailing the alleged violation. Upon receipt of said notice, the  
6 other party shall commence, complete, and cure within 15 business  
7 days the alleged violation, or in the event the violation cannot be  
8 cured within the 15 days, both parties shall agree to a reasonable  
9 time to cure the violation. It is understood that matters beyond  
10 the control of the parties shall extend the time required to cure  
11 the violation. In the event the violation is not cured within the  
12 time period, then petitioner may file its petition.

13 The petition must also allege that the claimed violation has  
14 not been corrected.

15 The petition must also allege that the moving party has acted  
16 reasonably and in good faith in the matter constituting the alleged  
17 violation.

18 **(13) Public Communication**  
19

20 No communication to the public media of any kind shall be  
21 made by the parties, directly or indirectly without consent of all  
22 parties.

23 The purpose of this restriction is to avoid mistaken  
24 characterization of the agreement or any other conduct that will  
25



1 exacerbate the unfortunate differences arising between the parties.

2  
3 DATED at Sitka, Alaska, this 21st day of January, 1994.

4  
5 Valorie L. Nelson  
6 Valorie L. Nelson  
Plaintiff

Stephen F. Sorensen  
Stephen F. Sorensen  
Attorney for Plaintiffs

7  
8 Connor K. Nelson  
Connor K. Nelson Individually  
9 and on behalf of  
Keystone Associates

10  
11  
12 John Roger Sudnikovich  
John Roger Sudnikovich,  
13 Individually and on behalf of  
S&S General Contractors and  
14 Equipment Rental, Inc.

Theron J. Cole  
Theron J. Cole  
Attorney for City & Borough  
of Sitka

15  
16 Edward A. Stahla  
Edward A. Stahla  
17 Attorney for Defendants  
S&S General Contractors and  
18 John Roger Sudnikovich

19 IT IS SO ORDERED

20 DATED this <sup>24<sup>th</sup></sup> day of January, 1994.

21  
22 CERTIFICATION

23 I certify that on 24 day of Jan. 1994  
24 a true copy of this document was placed  
in attorney's box/mailed to the following:

Larry C. Zervos  
Superior Court Judge

25  
STIPULATION FOR JUDGMENT  
Nelson v City and Sudnikovich  
1SI-92-440 CI

By J. Young  
Alaska Court System