

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

May 1, 2017, 6:00 PM.

Assembly Chambers - Municipal Building

Assembly Work Session - No public testimony

I. ROLL CALL

II. APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. **March 20, 2017 Committee of the Whole Minutes**

B. **April 10, 2017 Committee of the Whole Minutes**

IV. AGENDA TOPICS

A. **Utility Advisory Board FY 16 Annual Report**

B. **Alcohol Sales at Eaglecrest Ski Area**

On January 12, 2017, Eaglecrest Board Chair Mike Stanley sent a memo to Human Resources Committee (HRC) Chair Loren Jones regarding "Eaglecrest Alcohol Restrictions." A copy of this letter is in the packet.

On February 13, 2017, the HRC met with Mr. Stanley and Eaglecrest Director Matt Lillard.

Mr. Stanley explained that there are two separate issues the board is requesting the Assembly to consider.

1) The first request is to expand the premises currently covered under Resolution 477 to allow for private parties to have alcohol catering in Eaglecrest facilities other than the day lodge.

2) The second concept is to allow the Eaglecrest Board to lease a portion of its premises for the sales and consumption of alcohol to the public, similar to the Airport. Eaglecrest would contract with a licensed vendor who would then obtain all licenses, permits and staff.

The HRC voted to direct the Attorney to draft an resolution regarding alcohol consumption on an expanded Eaglecrest premises, not limiting it to just the day lodge, for special events as currently allowed in Resolution 477. The HRC voted to forward the question pertaining to alcohol sales to the public at Eaglecrest to the Assembly.

On February 27, 2017, the Assembly COW met in joint session with the Eaglecrest Board. Mr. Jones updated the Assembly on the HRC's request for a draft update to Resolution 477. Following discussion, the Assembly did not object to further investigation of alcohol sales to the public at the ski area.

On April 3, 2017, Mr. Jones reported at an HRC meeting that he had met with the Eaglecrest Chair Mike Stanley and discussed some concerns that the Law Department had raised. He then subsequently met with Ms. Mead, who has provided a draft Resolution 2793 in the packet.

C. **Mining Ordinance**

D. **Public Safety**

V. ADJOURNMENT

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city.clerk@juneau.org

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

March 20, 2017, 6:00 PM.

Municipal Building - Assembly Chambers

Assembly Work Session - No Public Testimony.

I. ROLL CALL

Committee of the Whole (COW) Chair Jerry Nankervis called the meeting to order at 6p.m.

Assemblymembers present: Jerry Nankervis, Jessie Kiehl, Maria Gladziszewski, Debbie White, Beth Weldon, Norton Gregory, and participating telephonically: Loren Jones, Mary Becker and Ken Koelsch.

Assemblymembers absent: None. [Mayor Koelsch left the meeting at 7:19p.m.]

Bartlett Regional Hospital (BRH) Boardmembers present: Brenda Knapp, Nancy Davis, Robert Storer, Cate Buley, Marshal Kendziorek, Linda Thomas, and Mark Johnson.

BRH members absent: Bob Urata and Lance Stevens.

Staff present: City Manager Rorie Watt, Deputy City Manager Mila Cosgrove, Municipal Attorney Amy Mead, Acting Clerk Beth McEwen, BRH CEO Chuck Bill, BRH CBHO Sally Anne Schneider, BRH Public Relations Officer Katie Bausler, CBJ Chief Housing Officer Scott Ciambor, Community Development Director Rob Steedle, Human Resources/Risk Management Director Dallas Hargrave, Engineering/Public Works Director Roger Healy, and Eng./PW RecycleWorks Team Michelle Elfers and Jim Penor

II. APPROVAL OF AGENDA

The agenda was approved as presented.

III. AGENDA TOPICS

A. Joint Meeting with Bartlett Regional Hospital Board of Directors

The packet contained a powerpoint slide show which BRH CEO Chuck Bill presented in detail to the COW. He touched on those issues at the Federal, State, and Local levels facing BRH which included some of the following key topics:

- The large obligation to PERS which required an extra \$3 Million from their budget over the last fiscal year;
- A greater demand for long term care than there are spots available;
- Competition with the private sector as almost all their physicians are private practitioners with hospital privileges;
- Inflation will at some point stretch too far for them to catch up;
- A significant shift from alcohol recovery to opioid recovery; and
- A shift away from commercial insurance reimbursement to those of the public sector.

In his presentation, Mr. Bill stated that in looking at their financials, their "Cash on Hand" would allow them to operate for 145 days and the Days Outstanding in Accounts Receivable (AR) are at 59 days. The typical hospital average for cash on hand is between 120 and 180 days so they are right in between that figure and the average AR days is at 60 so their 59 day number is right on target.

COW members asked about how a possible repeal of the Affordable Care Act (ACA) might affect the hospital operations and finances. Discussion took place regarding the different types of insurance reimbursements and the affect those have on the BRH budget. They also discussed the SEARHC patients, and if they were going outside of Juneau to get the services they could otherwise get at BRH and also how their insurance does or does not affect the BRH finances.

Mr. Gregory asked about how the bad debt affects the Cash on Hand figure. Mr. Bill said it is an adverse affect on the future Cash on Hand and that reflects the cash that is actually in the bank. He said that as bad debt increases or they loose funding in the payer mix, their ability to continue to contribute to that Cash on Hand is negatively impacted. Mr. Gregory said he was thinking about the homeless population who often come into BRH when they may be able to receive care elsewhere at a more appropriate time had they been housed. Mr. Bill said he anticipates that the new Housing First project will have a positive effect on that issue once it comes online.

When Mr. Bill went over the FY17 projections and the FY18 budget numbers, Mr. Kiehl pointed out that the numbers in the FY17 projection column needed to be double checked as they did not add up correctly. Mr. Bill said he would follow-up with corrected information to members after the meeting.

He then went on to talk about the recent electronic medical records implementation and the hospitalist program that began last summer. The committee discussed the challenges with respect to attracting staff, the cost of living in Juneau, and the seasonal recruitment and hiring swings between the summer and winter seasons.

Following Mr. Bill's presentation, Ms. Schneider then gave a presentation regarding the status of the Child and Adolescent Mental Health Unit (CAMHU) project.

She explained that they have looked at a variety of concepts and facilities for this project. The board has been very diligent in looking at all the possible options. She started with explaining what the different terms mean with respect to the language used.

An "Accute Unit" which is what CAMHU was originally, is a physically locked unit that deals with short term mental health immediate diagnostic emergencies such as a suicide attempt or a psychotic illness. It has a highly trained, specialized staff, including child and adolescent psychiatrists that can make that initial diagnosis. It keeps a child safe and provides a beginning diagnostic point. It does not provide follow-up care and it can be very expensive to run because of hospital requirements.

The second concept they looked at, beginning in 2016, was a residential facility. In Alaska, those are called "Residential Pyschiatric Treatment Centers" (RPTC) and is a whole different concept. It is for youth to stay an average of 3-6 months and for complex needs of children. This facility resembles more of a home and they have gyms, schools, and shared recreational areas. They have to have a way within the facility to divide up populations by gender and by age. This is longer term treatment that is reserved for children with serious and ongoing mental health issues.

The third concept they looked at and actually incorporated into the project was a "Crisis Stabilization" unit. This occurs in a community-based facility and is a place where families can present for emergencies. They wouldn't go to the hospital, they would go to the facility that has the crisis stabilization beds. They fall under different licensing requirements so the behaviors that those types of facilities would treat include self-harm, suicidal thoughts (not actions), depression, grief, relationship break-ups and other quick onset situations that might require an eventual transfer to a psychiatric unit. What they are trying to do with a crisis stabilization bed is keep youth from ever having to go to a hospital. She said these types of programs can also develop robust aftercare. It is not just the child in treatment, but rather the child and the family and the child and their larger support system.

She gave statistics relating the state of youth health within the community as well as within Alaska to illustrate the need for these programs. There are fewer beds in the state of Alaska to take care of youth and they are having to be sent to Anchorage and Seattle. Discussion took place regarding the

average age and wait times to meet the needs of the youth in Juneau as well as the economy of scale throughout the state of Alaska and regionally within Southeast Alaska.

As they were looking at crafting the request for proposal, Ms. Schneider said they looked at all these factors to address the specific needs identified. A feasibility study was conducted by Moss Adams to look at the number to see if BRH could do a 29 bed facility, including four crisis stabilization beds. They felt the crisis stabilization beds were critical and the study determined that it was feasible with a small operating margin but it was feasible by year three that they could make a profit.

There were two solid organizations that originally indicated an interest so an RFP was developed and sent out, however at the end of the RFP cycle, no proposals were received. When the two organizations who originally indicated an interest were asked the reasons they had not responded to the RFP, the reasons provided were the inability to execute the project due to other commitments and an insufficient positive operating margin.

In terms of implementation, BRH is looking at the following recommendations:

Reallocating \$2.2 million of the original sales tax to go towards a crisis bed facility that would also have corresponding intensive outpatient services to support youth mental health.

They would like \$0.6 million to help with safety spaces within Bartlett to have the right kind of facility for youth to wait for transfer.

They would also like to seek a community partner such as Juneau Youth Services (JYS). JYS has formalized their intent, through a letter that Mr. Bill is in possession of, to help work this type of program. They want to do it as a single point of entry for the community so law enforcement, families, and schools could present to JYS' crisis stabilization center and be able to seek services and be treated.

In terms of opioid addiction in our community, we have a critical need for detoxification. The Rainforest Recovery Center (RRC) facility that we have does not enable them to do actual detoxification at the facility which is occurring within the BRH at the hospital. She said they do not have a single point of entry for assessment services where families can come and go into a wide variety of services whether that is residential programming, short detox, or outpatient services so there is a need for a different facility set up. She noted that in the past 2 years at the RRC, admissions of female clients between the ages 22-25 who use heroin has increased 220%. In the year 2013, they had 3 pregnant drug users and in 2017 to date, they have had 3. Opioids as a drug of choice for RRC young adult population has increased from 15% in 2015 to 40% currently. Additionally, in Southeast Alaska between 2011 and 2015, there was a 490% increase in the Hepatitis C rates in young adults between 18-29 years. That was the largest for any region in Alaska. This crisis parallels the Governor's war on opiates, supportive legislative initiatives and the Surgeon General's declaration of crisis. CBJ needs the appropriate facilities, space and professionals to treat this population wisely, otherwise there is a risk in the rise of crime, serious ongoing health issues, and even premature death.

BRH is not focusing on a "Unit" at this time, but is rather are relooking at how they are focusing their attention and on what they can do for children and mental health service. This focus is on what they can do to provide a mental health base service in this community with a broader range of family involvement. BRH is committed to finding solutions and supporting the development of crisis stabilization beds with a corresponding partner. There is a unique opportunity right now with a community collaboration effort with a willing agency and they are hopeful they can pursue this.

Assembly members asked questions including what ages they were looking at when they were talking about 'youth or young adults' and also what the role of the Alaska Mental Health Trust has been in this process. Ms. Gladyszewski noted that the statistics that Ms. Schneider provided in her oral presentation were not included in the materials in the packet and asked if those could be provided in follow-up materials from staff.

Ms. Schneider said "youth could be defined up to age 21 and not be cut off at 18. She stated that she also thought they should be looking at the group of young adults, up to age 25, as well as youth when they are considering these programs because that is the key issue. She said with respect to the Alaska Mental Health Trust, they have been involved in funding some of the previous needs assessments in looking at this over the past 10 years.

Mr. Gregory said in looking at this statewide, we are lacking mental health care across the whole spectrum but also across the whole state and he asked how Juneau could become a leader in mental health care services for our state. Ms. Schneider said that was one of the issues that the BRH board has committed to continuing to look at. They were disappointed that a partner did not come forward. At this point, she said they need to start at a level with crisis stabilization and build on those services and they need the providers to be able to help treat youth. The services they are looking at with RRC in creating a step up/step down continuum of care and they were awarded the medically assisted treatment grant that they are working on. They will have a federal visit from SAMSA at the end of April. The more spectrum of services they can build, that is how they become an expert and those are models that can be replicated in other parts of the state.

Discussion took place regarding CBJ land, the recruitment and retention of care providers and the possibility of making some of CBJ land available for workforce housing as one potential solution. Dr. Buley and others discussed the possibility of land/housing incentives for people looking at participating in the new hospitalist program. She mentioned that Juneau won't be in a leadership position in the mental health field until we have a long term stay option. She would suggest a residency program for mental health as well as medical pediatricians. It takes 5-6 years to develop that type of facility/program and would be a center for excellence.

Additional discussion focused on the dollar amounts and the uses of those monies as proposed by BRH. Mr. Kiehl had a number of questions regarding the amounts in question as well as what would be considered capital costs vs. operating costs.

Mr. Bill stated that for the crisis stabilization beds, \$1 million would be capital costs and approximately \$650,000 would be operating costs. He said he does have permission to distribute the letter of intent from JYS. He also stated that the \$1.2 million for the RRC detox bay would be capital costs.

Mr. Jones expressed his concerns regarding the whole project in light of the possible repeal of the ACA as well as major cuts proposed to Medicaid in the near future. He said he would need to see a lot more data to be able to support this. He also questioned the accounting method being used in which the CAMHU reserve funds are being included in the calculation of the "Cash on Hand" 145 day funds.

Mr. Bill noted that the BRH board has reserved \$10 million for the potential CAMHU and the "Cash on Hand" calculation, including those monies is a standard accounting practice. He said that as Mr. Jones noted, there is a lot of instability on the horizon.

Mr. Nankervis thanked the BRH members for their work and participating in this meeting.

Mr. Nankervis called for a break. The break began at 7:19 p.m. and resumed at 7:28p.m.

B. Wellness Strategy

Mr. Watt said that he provided the memo in the packet as an attempt to frame the question relating to an overall CBJ Wellness Strategy. The goal was to look at the big picture within the community and to provide a mechanism by which it could be addressed by the Assembly and the public alike.

In putting this together, he said he came to understand that the role of CBJ is unclear to a lot of people in the public, and perhaps unclear to some of the social service providers and found that it would be helpful to confirm what CBJ's role is with respect to these topics. His memo was an attempt

to provide some of that clarification as well as to frame the questions and to come up with a strategy for moving forward.

He noted that the historic role of CBJ has been that of a granting agency through Social Services Grants, Utility Waiver Grants and more recently with the hiring of the Chief Housing Officer, a coordination role in compiling data and helping coordinate community resources. CBJ is not a provider of Social Services and he does not see the city getting into an operational role. He said that it was good to have an opportunity to write down in one master list all the things the city has accomplished over the course of the past year with respect to these issues. He noted that at the city, we don't always understand what the non-profits do, their priorities and how they see CBJ. He said that CBJ needs to do a better job in hearing from them in a more organized manner to have a better understanding of what is going on within the community.

He said that with his memo, he also provided a "Community Wellness Ideas Proposed" list to help them frame the conversation. He said the document was not formatted in any priority order but rather just an effort to frame the discussion by including them all in one place. If the Assembly is able to consider funding for one or more of the items on the list, it is important that they are all looked at comprehensively. He is sure there are ideas that are missing and the public and the service providers need the opportunity to add to the list.

His main goal at this meeting was to introduce the topic, frame the context for the conversation, and to get feedback from the Assembly on whether they like the framing or if they think it should be different in any way. If so, how the Assembly would like to steer the public in providing input and comment on these issues.

Mr. Nankervis thanked Mr. Watt for bringing this forward at his request. He said the Assembly has been fairly limited in their scope in looking at this. Some of these things have been in front of the Assembly before but there has been a lot of stuff going on in the background. He asked Assemblymembers to weigh in on this and if they wish to provide direction, especially in light of this coming up as they are entering into the budget cycle.

Mr. Jones expressed his concern that this is being framed as a "Wellness" plan but is not since wellness is the absence of disease. To him, the framing of a wellness plan would be a generational change such as those being worked on by the Juneau Rock and Best Start projects. He sees this as an adult rehousing plan and he was concerned that some of the ideas proposed on the memo's attachment list such as the new sobering center and the medically assisted treatment outpatient center were not even discussed by BRH during that portion of this meeting and that would be a real issue. He discussed the focus and priorities of the providers as being set by their funding agencies, such as the state, and in light of the fiscal outlook, he does not anticipate an increase in program funding for these priorities. He said with those general parameters, we have a nice laundry list but very little power as to how that laundry list gets monetized. He said he will hopefully have more specifics to discuss with the City Manager when he returns to Juneau.

Mayor Koelsch said that the discussions starting in December were helpful in bringing a lot of these issues forward. He said he felt the Assembly has listened to a lot of the public input, not only on homelessness but on a whole series of community issues. He feels the Assembly should be applauded for starting this discussion in this manner and he feels they need to continue it. He will also save his comments for when he returns to Juneau. He noted that since he was on the east coast, he would be signing off from the call shortly since it was approximately 11:30pm his time and he had an early morning engagement.

Mr. Kiehl shared Mr. Jones' concerns and he asked the City Manager with respect to Chief Housing Officer position, how well he has been able to keep that position focused on the duties the Assembly had in mind when it was created vs. how much that expertise is being used in other desperately needed ways in the community. He said that his sense was that they had created the position to work on housing supply and we ended up with an amazing individual with tremendous expertise whose focus may have shifted some.

Mr. Watt said that was a great question. When they hired the Housing Officer, they were clear that the mission was work on housing supply, the housing action plan, and implementing housing. There has been a strong pull towards the issues that were mentioned in this memo. There are hooks to housing with the homeless population but the pull has been a lot stronger than he would have thought six months ago. He said that we do need to decide where to direct his resources. Mr. Kiehl said it feels like we have hired a fabulous triathlete only to run but we still have the desperate bicycle and swimming legs to manage and it is a wonderful challenge to have. He raised the question first because he knows that the Mental Health Trust is currently paying for a homelessness coordinator for Anchorage and he was wondering if they might be able to hear from the Mental Health Trust or the individual providing those services about what opportunities might be able to be provided for coordination of services with the capital city. Mr. Watt said they could follow-up on that.

Mr. Kiehl said with that in mind, he is interested in hearing from the City Manager as to what the path for the issues will be going forward. Mr. Watt said he was quoted in the media as mentioning to the Juneau Chamber of Commerce that if his email gets filled with 100 suggestion, it would make him very happy. He said that he does not want to prejudge what those responses will be. He said that we need to hear from the community; we have tried to explain all the things the city does and the next step is to listen and then respond accordingly.

Fundamentally, the city's role on a lot of these issues on the social services side has been as a granting agency. He said after we receive the public input, it is up to the Assembly to decide if it likes its current position or adjust the way they direct those monies.

Ms. Gladziszewski said that she appreciates the start at writing all these things down in one place but agrees with Mr. Jones that this is not really a wellness issue but rather a crime/substance abuse/homeless strategy. She said we have been a granting agency and she was speaking with the Salvation Army about becoming a low barrier shelter that they intend on opening next year. She said that they will need money to help them get that going. That is the type of thing that agencies come to the Assembly for and without having a strategy, something they receive one request at a time. She asked that once they hear back from the public, what the holding environment will be, such as a plan or some other method of delivery.

Mr. Watt said that was a good question, he anticipates reaching out to agencies such as the Homeless Coalition and others. He said he thinks the Juneau Community Foundation is interested because they have a dual role in managing the city's grant monies as well as managing the Hope Foundation. He said there are other entities in the community that traditionally have not communicated to the Assembly. He said this is his best effort to trigger that process and he had not yet identified a particular path or holding environment or plan.

Ms. White said she appreciates this snapshot on where we were as of March 14, 2017 because it is difficult to chart a course for where you want to go without understanding the picture of where you are at to begin with. This will give them something to look back on to be able to measure themselves against. While she sees some things in the memo that cause her to raise her eyebrows, she felt it is better than what they had on March 12.

Ms. Gladziszewski said that the holding environment in the past for some of these things has been in the Assembly Goals. She said one of the key topics that have been in the goals has dealt with the Housing Officer and she shared Mr. Kiehl's analogy of the triathlete.

Mr. Watt said that in some ways, he tried to frame the discussion around the Assembly's goals and that was why things such as Rock Juneau and child wellness issues weren't included since those were not included in the Assembly goals list.

Mr. Nankervis thanked the Manager for bringing this forward to begin the conversation.
Mayor Koelsch left the meeting at this point. [7:51p.m.]

Ms. Mead said there was one small Municipal Attorney portion on the top of page 2 of the Community Wellness proposal that she is getting ready to submit a proposal to the Criminal Justice Commission and she wanted to make sure that was something the Assembly would support her doing.

Ms. Mead described the proposal for a pilot program that would be administered by a contractor through her department. It would be paid for by a federal grant and the program would address recidivism rates for low level property crimes and criminal trespass. Discussion took place on how the program might operate and the Assembly members expressed their support for Ms. Mead to pursue the pilot program.

C. Essential Public Facility

Mr. Watt explained that there is a very rough draft ordinance in the packet along with a memo from him and another one from Ms. Mead. This is a new kind of idea for considering a variety of types of facilities including ones that they have been discussing during this meeting. It is for facilities that are designed to meet very specific public needs and often highly dependent upon location for them to be successful. He said it was briefly discussed at the close of the joint meeting with the Planning Commission in January.

The only action they are looking for at this meeting is to forward this to the Planning Commission as an amendment to Title 49. He noted that this could be controversial or not popular. He said the thrust of the ordinance would be to exempt some types of facilities from the usual zoning considerations from the Table of Permissible Uses (TPU). BRH may have a good example for this sort of thing such as buying a house and renovating the house for use as residential treatment facility. That would most likely be in a residential neighborhood where it may not be a permitted use.

Some examples might include a year-round campground in the old mill site, a sobering center, a warming shelter, etc... all of those meet this type of category. As Ms. Mead's memo indicates, this is an approach taken in Washington state and the draft ordinance is modeled after that. It is an idea and worth considering. He expects many opinions to be expressed about it because it would essentially exempt the city from a process that a lot of applicants don't get to be exempted from. That said, the purpose would be to provide services that a lot of people are not lining up to provide. Mr. Watt said he would be looking for Assembly approval to forward this to the Planning Commission for review and recommendation by the commission and staff.

Mr. Nankervis asked Ms. Mead if she wanted to add anything before turning this over to the Assembly for questions. Ms. Mead said she would like to clarify that the only exemption these would get would be with respect to siting and location. Otherwise, it follows a fairly similar process to the Conditional Use Permit. That is a piece that this draft is nowhere close to solving. CDD would need to flesh out such things as identifying what types of conditions the Planning Commission would look at, what should they be imposing and what are the documents that would need to be submitted. She said that it is a very specific exemption to the siting piece of the commission process.

Mr. Jones said that he understands all the topics that have been touched on in the draft ordinance and in the memos. His question has to do with whether or not this concept would be used in the future for other things such as composting sites, landfills, jails and would those facilities be eligible for this?

Ms. Mead explained that the last example for jails already exists. The ordinance envisions a process for the Assembly and Planning Commission to determine the criteria for being considered "an essential public facility" (EPF) were met.

Additional discussion took place regarding the TPU; what would qualify as an EPF and how this would depart from the current process from neighborhood zoning planning. Mr. Kiehl, Ms. Gladziszewski, and Mr. Jones all expressed similar concerns with this ordinance and the process by which it would be implemented according to the draft ordinance.

Ms. Mead and Mr. Watt both stated that this draft ordinance was a starting spot with which to begin to frame the discussion and it could be modified from its current form into anything the Assembly and Planning Commission feels is best.

Mr. Nankervis said that since he was not hearing any objections to review and work by the Planning Commission, they forward this draft ordinance to the Planning Commission for review and recommendation. Mr. Jones asked that if they did take that course that the Assembly should set a timeframe by which they would expect to hear a recommendation back at the Assembly. Mr. Watt explained that both staff and the Planning Commission currently have a lot on their plate and rather than just the Title 49 subcommittee review, this would likely be something that the whole Planning Commission would take part in. Mr. Nankervis asked if Mr. Jones would be comfortable with the Assembly getting updates on the Planning Commission's workload and where this fits within that workload. Mr. Jones said that would be fine. Ms. Gladyszewski said this project may take some time.

Mr. Watt said that there had been a TPU change that was coming forward on the sobering center and he was thinking about where they are right now vs. where they started last summer. Last summer, the community was very concerned about overdose deaths from opiates and BRH felt like they could possibly serve the community better if sobering moved out of RRC. The question of where sobering could go became an exercise of updating the TPU which took a while through traditional means. He said there were not going to be practical options in the community for consideration so in January, he decided to go down this path to explore this idea. By sending this to the commission, they are taking that sobering center TPU issue and shelving it. Ms. Gladyszewski asked if the sobering center TPU part was not moving anymore. Mr. Watt said it has been forwarded by the Commission to the Assembly but in January, he stopped it and said let's hold onto it and bring back this different kind of idea.

D. RecycleWorks Update

Michele Elfers gave a presentation regarding the RecycleWorks program. Her presentation was focused on the Assembly goal to ensure that Juneau has a functioning, local, solid waste disposal option in the future. She concentrated on the RecycleWorks program and how that diverts waste from the landfill and how that may contribute to the Assembly's goal.

Ms. Elfers said there are three main issues that were the focus of her presentation that are somewhat time sensitive:

- 1) In the last two weeks, CBJ found out that the waste collection certificate of public convenience and necessity is being proposed to be transferred from Arrow Refuse to Waste Connections;
- 2) There is a place in the program budget where their expenditures will start to exceed their revenues; and
- 3) Alaska Brewery has requested to purchase some of the Engineering/Public Works lots in Lemon Creek that currently house the Household Hazardous Waste (HHW) Facility and the Water Utility.

She presented a timeline spanning from 1992 when Tonsgard offered to sell the landfill to CBJ to a projected end date of the landfill in approximately 2036. In 2015, when she became the project manager for RecycleWorks, they produced a solid waste action report which outlined the steps they would take to focus on the diversion of waste from the landfill, which included expansion of the recycling services.

With respect of where they are today is that the request to the RCA for transfer our waste collection certificate is currently under the public comment period which ends on March 28. If all goes through, the certificate will be transferred at the end of August to Waste Collections. Waste Collections is a large, publicly traded company that owns landfills in the lower 48 and operate waste collection services around Alaska already.

Ms. Gladyszewski and Mr. Jones asked about the sale of the waste collection and transfer of the certification and the timing of public comment period. Ms. Elfers said that CBJ just learned about it during the previous week and the comment period is less than 30 days and will end on March 28.

Ms. Elfers said with respect to the budget, they spent a few years building their fund balance so that they could make some major capital expenditures. Some of the recent capital expenditures included the purchase of a new baler and drop boxes located around the community. They also bought the streets division out of the Lemon Creek Public Works shop area by building a covered salt storage structure at the Public Works 7-mile shop in order to remove it from the HHW facility premises. They are also looking at making some additional capital expenditure to take care of sharps, marine flares and medical waste locally.

The value of the sale of the recycled materials has gone down significantly while at the same time, all the contract costs have all been rising significantly across the board. For FY18, they have been told that there will be a 300% increase in the junk vehicle contract. They have another contractor that has also told them that they will have a 300% increase and while that contract is for a much smaller dollar value, it is still significant. The HHW contract has gone up 25% in the past year, shipping has increased and it is just getting more expensive to do business.

Ms. Weldon asked how much effort is spent trying to find owners of junk vehicles. She said that in the RecycleWorks program contracts with Skookum Recycling for the junk vehicle program and the vehicle owner has to sign a responsibility form. She said that JPD has a separate program that deals with abandoned cars and they try to go out and find the vehicle's owners but they are not always successful.

Ms. Weldon said that she thought that BRH had its own solution for handling medical waste. Ms. Elfers said they do not.

Mr. Kiehl asked if they have tried to rebid those contracts that are having such large increases. Ms. Elfers stated that for the HHW contract, they did just rebid it last spring when they were told the contract costs would go up. The rebid received four proposals and three of the proposals were pretty much on par with costs and so they realized that the costs of doing business itself had gone up. She said that in the end, it was a good decision to rebid because they were having several problems with the contractor and she thinks they will get a better level of service with the new contract. They are currently considering rebidding the junk vehicle contract and she hopes it does not turn out to be a 300% increase in the costs but they have just learned about this so they still need to go through that process. In the FY18 proposed budget, they did include funding for that increase because they have not yet had the time to go through that process.

Mr. Kiehl asked if they have looked at what the difference in cost might be if we decided to do it ourselves rather than do it through a contract. Ms. Elfers said they have not yet done that but that there would be value to do that type of review. She said it would be likely that they would need to look at finding land and possibly equipment to do that.

Ms. Elfers explained the staff time and resources currently budgeted as well as projected budgeting for FY18 and also gave an overview of the user rates and how those are generated and collected. One of the slides she presented showed comparisons for Juneau's user rates for motor vehicle registration rates as they stack up against other communities across Alaska. She said they have looked around the state to find comparable rates and it is difficult to find programs like ours that have a separate rate that they assess to residents for recycling and HHW. She said that most of the time, since most communities own their own landfill, their rates are tied up with collection fees and are all one rate.

She then turned the conversation to the discussion of the request from Alaska Brewing Company to purchase some of the CBJ water utility and salt box lots and if they were to sell those lots, the RecycleWorks, HHW, and junk vehicles programs would need to be relocated. She gave an overview

of the pros and cons of four potential sites they are considering should they decide to go through with this option. They are looking at consolidating programs for user convenience and operational efficiencies. She said they have discovered that the more easily accessible the sites are to the public, the more waste streams are diverted from the landfill.

The four sites are:

- 1) Valley Shop, on Barrett Avenue
- 2) Channel Construction Property, Anka Street
- 3) Lemon Creek, Old Gravel Pit
- 4) Capital Disposal Landfill, Lemon Creek

She discussed the four possible locations.

Option 1 - would only work for one of the two programs: Water Utility or HHW but not both. She said it would likely work best for Water Utility rather than HHW.

Option 2 - Channel Construction Property, Anka Street is 5.5 acres located next to Skookum Recycle where the junk vehicles program operates. Part of the agreement would include an option to buy the 1 acre next door to the property for sale.

Option 3 - Lemon Creek, Old Gravel Pit. This site would cost quite a bit to develop an access road with utilities.

Option 4 - Capital Disposal Landfill, Lemon Creek. This would require a long term contract for 10 years where CBJ would not own the property. The new baler is currently in that building and the building is the old incinerator location but it leaks and is somewhat falling apart and would have to be rebuilt. Mr. Watt said that with option 4, for the purposes of the capital investment, both parties would want a long-term contract.

Mr. Jones asked about the ACS land across from Anka and whether that was still a possibility. Mr. Watt said that ACS is not interested in moving its facility.

Ms. Elfers suggested that they may want to forward discussion of the land sell to the Assembly Lands Committee and to refer the other topics relating to rates and finances to the Assembly Finance Committee.

Mr. Kiehl asked with respect to the possible sale of the Waste Management certificate currently undergoing the 21-day public comment period if the City Manager or others see any opportunities for the city to comment. Mr. Watt said that he and Ms. Elfers had a phone conversation with the Waste Connections representative. They were excited about the business opportunity but were unable to give much detail about what they envisioned on their operation moving forward. He said they spoke broadly about wanting being a community partner but didn't have details.

He said that the issues that would be of most concern to us over the transfer of the certificate would be 1) the cost of the sale of the certificate which is confidential but it would be an impact to our ratepayers; and 2) having the RCA hold a public meeting in Juneau so that our users and ratepayers have an opportunity to ask questions and learn more. He said that if we are going to request that meeting or request knowledge about the value of the certificate, the clock is ticking.

Additional discussion took place regarding the history of the Assembly possibly acquiring the certificate back in the 1990-2000's which resulted in no action by the Assembly to pursue the certificate. A myriad of topics including the possibility of mandatory trash service, recycling, and other topics were discussed at length when that was looked at previously. Those negotiations were terminated because it did not appear to be economically feasible. Conceptually having more local control of the issue is appealing but whether it is economically possible in terms of a value on the certificate, Mr. Watt does not know whether it is practicable to enter into negotiations. He would characterize this as a big topic.

Ms. Gladyszewski gave an overview of the 2008 waste study history and why the Assembly did not pursue the certificate since it would have cost millions of dollars at that time and while she doesn't know the amount of the sale of the certificate for the present transaction, that was the reason the city did not pursue the certificate 10 years ago.

Mr. Gregory asked what happens when 2036 comes and the landfill closes down. He said that he really despises that there is a landfill in the middle of Lemon Creek. He said it would seem that the city may be in a better negotiating room at that time with respect to zoning of the next landfill. He spoke to what other communities in southeast are doing and there has to be a long term option in the future that is a better, more economical, and hopefully more environmentally responsible way to deal with our rubbish.

Ms. Elfers said that if nothing else changes and the landfill closes, we will likely end up shipping our waste out of town. She said that may happen before the landfill closes but by not having that certificate, we don't control where the waste goes. If we wanted to build a new landfill, find the land and pay for it as a community, it would be wise to only do that under some sort of agreement with the owner of the certificate to ensure that waste was directed to where they wanted it to go. We don't have assurance that shipping would be cheaper.

Additional discussion took place regarding the RCA certificates and how they are managed. Mr. Watt also addressed the question about year 2036 and how not having a local landfill would be very expensive. He said that some of that heavier demolition/construction would be difficult to dispose of without a landfill. There is value of maintaining a landfill for the next generation and today we do not want to use any more of that volume than we need to.

Mr. Kiehl expressed his concerns and said he felt it would be appropriate to request the RCA have a public meeting in Juneau and to hear about the rates as relates to this pending certificate transfer. Discussion then took place regarding the form of the public notice from the RCA and the Assembly asked the Manager to request the RCA hold a public hearing on this matter in Juneau. Ms. Elfers said she did speak with the RCA and they would be agreeable to hold a hearing on this matter. Mr. Penor stated that the RCA could be sent a letter asking for a public hearing to be held regarding this certificate sale.

Ms. Elfers then answered a number of questions from members about her presentation and she and Mr. Watt talked about the possible next steps for the Assembly with respect to the three questions posed at the beginning of the presentation.

MOTION by Mr. Jones to move the potential sale of land to the brewery be referred to the Assembly Lands Committee and the discussion related to the costs of operational items be referred to the Assembly Finance Committee with the discussion on possible relocation and consolidation expenses to be worked out at the Lands Committee to then be brought forward to the Assembly Finance Committee. *Hearing no objection, the motion passed.*

IV. ADJOURNMENT

There being no further business to come before the body, Mr. Nankervis adjourned the meeting at 9:20 p.m.

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

April 10, 2017, 6:00 AM.

Assembly Chambers - Municipal Building

Assembly Work Session - No public testimony

I. ROLL CALL

Deputy Mayor Jerry Nankervis called the meeting to order at 6:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Maria Gladziszewski, Norton Gregory, Loren Jones, Jesse Kiehl, Ken Koelsch, Jerry Nankervis, Beth Weldon and Debbie White.

Assemblymembers Absent: None.

Aquatics Board Members Present: Max Mertz, Chair; Ritchie Dorrier, Joe Parrish, Tom Rutecki.

Aquatics Board Members Absent: Becky Monagle, Pat Watt, Charlie Williams.

Staff present: Rorie Watt, City Manager; Amy Mead, Municipal Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk; Bob Bartholomew, Finance Director; Rob Steedle, Community Development Director; Kirk Duncan, Parks and Recreation Director, Julie Jackson, Aquatics Manager; Greg Chaney, Lands and Resources Manager; Scott Ciambor, Chief Housing Officer; Ed Mercer, Deputy Police Chief.

II. APPROVAL OF AGENDA

Mr. Watt requested and hearing no objection, the committee added a discussion about "lands into trust" as the trailing item on the agenda.

III. APPROVAL OF MINUTES

A. March 13, 2017 Committee of the Whole Minutes

Hearing no objection, the minutes were approved with minor corrections.

IV. AGENDA TOPICS

A. Aquatics Board Update

Max Mertz provided the Assembly with an update of pool operations. He said food service is happening at the Dimond Park Pool. They are getting a better handle on numbers for the budget. He spoke about bulk ticketing, an energy audit, the youth scholarship program through the Gaguine Foundation, and the marketing plan. He spoke about the idea of an "all-city pass" for multiple recreation programs, that would provide a discount for people who purchase pool / ski / ice arena passes. They are in the early stages of discussion with Eaglecrest on this. They have some maintenance issues that they would like the Assembly to consider funding with 1% sales tax funds. They have a 30-item punch list and they would like to do them all at once but they are addressing them as funding is available. By covering the pool every night, CBJ could recover \$40,000 a year in energy savings. Other communities in the area are covering their pools and the board would be addressing this new idea. The board is reviewing data to understand the times of usage and will consider pool closures based upon slow periods with little impact to users. We are recruiting for swim instructors, there is a shortage. The board sunsets on June 30, 2018 and the Assembly will need to review the need to continue the board's work.

Tom Rutecki said that having gone through the budgeting exercise and reading McDowell reports, it is clear that pools, parks, and recreation are essential services. There is a very diverse user group for the pools, including kids, infirm people and the pools are used for more than just recreation.

The Assembly asked questions and discussed pool operations with the board, including the idea of the "all-city" pass, the pool cover, encouraging the new senior living facilities to use the pools, pool staffing, the auto-pay system, data collection and use of data.

Mr. Nankervis asked how the board structure is working. Mr. Mertz said for now this is working well, and since Mr. Duncan is a person who can handle many hats, with ten direct reports, it works. If he retires it will be an unknown if the replacement has the same capacity. It is unusual that Mr. Duncan has a supervisor, the City Manager, and also reports to the Aquatics Board. Mr. Duncan said that the situation works because the board is hard working and effective. Mr. Mertz's financial background and Mr. Rutecki's sports background help. His preference would be for the board to be either be fully empowered or sun-setted and they were having those discussions.

Mr. Nankervis thanked the board and staff for their time and effort in volunteerism.

B. Housing Data Update

Mr. Ciambor said that since the 2012 Housing Needs Assessment, data shows that 228 single family homes have been built to meet the 2012 goal of 517 homes. 324 units of fair market multi-family rental units were created and exceeded the 172-230 goal in 2012. 154 low-income units were permitted, which included three large complexes just coming on line now, towards the goal of 441 units. 98 accessory apartments were brought on line, which had not been part of the 2012 needs assessment. Mr. Kiehl noted that the numbers did not reflect the loss of the Gastineau Apartments, and Mr. Ciambor said the data was based on permit statistics from the Community Development Department. The needs are greatest for single family homes and low income units. Ms. Gladziszewski asked if another needs assessment would be done. Mr. Ciambor said there was a needs assessment in 2010, in 2012 and in the Housing Action Plan. This update was an attempt to keep the data up to date and he is working with the Community Development Department on how to go about keeping the information before the development community. Pederson Hill would provide 86 more lots for single family home development. He provided a review of comments heard at the recent home show. An issue to monitor is how to rehabilitate and utilize older and expensive existing housing stock. His goals include a Housing Action Plan website. The sale of property at 2nd and Franklin was recorded at the end of March. Three lots have been sold in the Renninger subdivision. The preliminary plat for Pederson Hill subdivision was approved by the Planning Commission. Housing First permanent supportive housing was on-line and Bob Bartholomew was meeting with interested parties regarding potential CBJ bonding capacity to assist in development of a senior assisted living and memory care facility. He spoke about the success of the accessory apartment incentive grant program. The mobile home loan down payment assistance program started in September 2016, two loans have been made and he will continue to monitor. He provided recommendations from the Affordable Housing Commission for an upcoming CIP request.

The Assembly asked questions and discussed issues such as data reporting, mobile home parks, the accessory apartment incentive grant program, and public interest in a private subdivision development loan program.

Mr. Nankervis thanked Mr. Ciambor for his report.

C. Pederson Hill Project

Mr. Gregory stated a conflict of interest in that his employer is interested in purchasing some lots. Mr. Nankervis noted the conflict and Mr. Gregory did not participate in this topic.

Mr. Chaney said Pederson Hill is a dynamic and large project. that has reached a decision point. The Planning Commission has approved the preliminary plat. The project was now at a decision point for the Assembly on how to implement the subdivision and how to pursue final plat approval by the Planning Commission. The choice before the Assembly was either a single final plat approach or two final plats approach.

Single Final Plat Approach

If the entire 86 lot subdivision is recorded as one plat, to guarantee the improvements, available funding would have to total \$8.8 million prior to recording the plat. That could be accomplished as follows:

1. Use \$4.6 million currently available from the Pederson Hill CIP;
2. In addition, transfer in \$2 million from existing projects;
3. Also loan the project \$2.2 million to put funds on the books to record the plat.
4. Sell approximately 20 lots to complete needed funding, de-appropriate the loan.
5. Complete the improvements (in several construction contracts),
6. Sell the remaining lots with timing to be determined by Assembly.

Two Final Plats Approach

Break the existing preliminary plat into two stages.

1. Go back to the Planning Commission to record final plat for the first stage, build the first stage using \$4.6 million from the Pederson Hill CIP. Note: there is an additional \$2 million from Lands CIPs that could be transferred in if necessary.
2. Sell lots to capitalize the project and then return to the Planning Commission to record the second final plat and build the second stage.
3. Sell remaining lots, timing determined by Assembly.

Mr. Bartholomew said he would need to find a pool of funding in the amount of \$2 - 3 million to be available for a several year window as a pledge to the project without actually putting cash into the project. There are other sources, including CIP funding, but the cleanest is a treasury loan.

Mr. Chaney outlined, and the Assembly discussed, the pros and cons of the choices. Mr. Watt shared his project development experience. The Assembly discussed the project, including topics such as cost of mobilization and development of the subdivision, the options for sale of the lots, selling lots as a block and as single lots (the patchwork approach), the rate of sales of the lots, the timing of this development in light of the current economy, and the terms of any treasury loan.

Mr. Chaney said CBJ currently has a contract with DOWL to do the design work and a decision on which method of development is needed to instruct the design work.

MOTION, by Weldon, to direct staff to move forward in the "two final plants" approach.

Ms. White objected and said this would open the project back up for Planning Commission review and the first vetting of the project had not been an easy haul.

Ms. Gladziszewski said she leaned towards doing the full project with the central treasury loan and felt it could offer more flexibility for development purposes knowing that more than 86 units of housing are needed in the community.

Mr. Kiehl said that 30 lots sold at approximately \$75,000 would cover the loan amount for financing the project.

Roll call:

Aye: Weldon

Nay: Becker, Gladziszewski, Jones, Kiehl, Nankervis, White, Koelsch

Motion failed, 1 aye, 7 nays.

MOTION, by White, to direct staff to move forward in the "single final plat" approach.

Ms. Weldon objected. She was concerned that this approach would be more difficult for local contractors, and could take away some flexibility.

Mayor Koelsch spoke in favor of the motion and said he thought this would give local contractors more opportunity and if the project was broken into segments it could help. By putting this many lots out we could do something about driving down the costs and open up more housing.

Ms. White asked if developed in this manner, could the infrastructure work be split in a way to keep it available for local contractors. Mr. Watt said that would be the intention, and staff would try to optimize bid packages to get maximum competition, which would make local contractors happy.

Ms. Weldon removed her objection.

Mr. Nankervis said he is intrigued by the patchwork approach for disposal.

Hearing no objection, the motion passed.

D. Fireworks Report

Deputy Chief Mercer said from Nov 2016 - March 2017, they responded to 22 calls to fireworks, most around Christmas and New Years, and issued 3 citations. Officers in the field had discretion on which laws to apply to any given situation, and had issued citations for the CBJ disturbing the peace ordinance and for the state disorderly conduct statute. He said that the 4th of July would be a test and JPD would follow up with citations if warranted.

Ms. Weldon asked if there had been a decrease in aerial booms. Deputy Chief Mercer said there was a mix of types, including fireworks, m-80's, seal bombs, but he did not have a specific response.

Ms. White asked about a citizen report of an unexploded firework found after the snow melted and showed him the object. Deputy Chief Mercer was not familiar with it and he took it to ask another officer to assist with identification. He said JPD's top priority was public safety, and JPD can enforce reckless endangerment or criminal mischief with proof.

Ms. Becker asked if there was an area in town that received most complaints. Deputy Chief Mercer said fireworks activity is reported from a broad area ranging from Thane Road to Mendenhaven in the valley.

Mr. Gregory reported a recent incident of a driver throwing explosives from his car and Deputy Chief Mercer said that was similar to an incident that JPD followed up on around Christmas time.

MOTION, by Becker, to make no changes to the city code that would create a separate fireworks ordinance.

Mr. Kiehl said he preferred to make that determination after the 4th of July.

Mr. Jones objected. He supported a fireworks ban.

Ms. Gladziszewski objected and wanted to get more information.

Roll call:

Aye: Becker, Gregory, Nankervis, White, Koelsch

Nay: Gladziszewski, Jones, Kiehl, Weldon

Motion passed, 5 ayes, 4 nays.

E. Economic Development Plan Update

Ms. Cosgrove explained her work in a spreadsheet to update recent actions taken to address the economic plan's goals. The construction on the North Douglas road extension has begun. There is discussion to reach an agreement between CBJ and UAS on the Auke Bay Marine station. There are many projects moving downtown development forward. There is good work happening on the senior housing front. The Assembly did good work on the UAS School of Education, and in addressing fundraising for that program. JEDC has worked on a wide variety of projects. Some items in the Housing Action Plan are being addressed and the Chamber of Commerce performed a study of shipping costs in and out of Juneau.

Mr. Nankervis thanked Ms. Cosgrove for the condensed summary of the written update.

F. Lands into Trust (added to agenda)

Ms. Mead said that Central Council of the Tlingit and Haida Indian Tribes of Alaska (Central Council) would like to place some of its tribally-owned land into trust through the federal government Bureau of Indian Affairs (BIA). This action changes the land status and removes the property from taxation and zoning laws, among other things. There would be some jurisdiction issues for law enforcement and there may need to be agreements about services. T&H was going to present us with a list of properties. We have not received copies of applications, but just some information. One lot is moving forward through the BIA process - there is a 30 day notice period, and we have not received notice yet. The comment period is short, there may be a possibility to ask for additional time, as we have no proposal for intergovernmental agreements. The plan is to get more information on the actual application and the impacts, so that the Assembly can provide direction on a position from CBJ at the next meeting. Ms. Mead said it is important to understand the scope of the applications intended so that we can start working on interagency agreements. She will do her best to get information to the Assembly.

There was no objection to requesting an extension to the application, if it was available, in order to gather more information.

V. EXECUTIVE SESSION

A. CLIA Litigation Update

MOTION, by Kiehl, to enter into executive session to discuss the Cruise Line Industry Association of Alaska lawsuit. Hearing no objection, the Assembly entered into executive session at 9:05 p.m. and returned to regular session at 10:20 p.m.

Upon returning to regular session, it was noted that the Assembly heard information from, and provided direction to staff regarding the CLIAA lawsuit.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting was adjourned at 10:21 p.m.

Submitted by Laurie Sica, Municipal Clerk



MEMORANDUM

DATE: 9 March 2017

TO: Assembly of the Whole

FROM: Utility Advisory Board

SUBJECT: UAB Annual Report to the Assembly for FY16

This memo constitutes the CBJ Utility Advisory Board's (UAB's) annual report for Fiscal Year 2016 (FY16).

Attached you will find the FY16 Utilities Division Annual Report prepared by Utilities staff. The report is a summary of the division's activities and fiscal health. The UAB would like to point-out a few items mentioned in the report.

The UAB believes that the most critical information is contained in the tables and graphs on pages 2 and 3. Note that both the Wastewater Utility and Water Utility were able to keep operating expenses lower than budgeted amounts for Fiscal Years 2013 through 2016. Nevertheless, without additional revenue sources:

- The Wastewater Utility is projected to exhaust its fund balance reserves by FY20, and the Water Utility is projected to do so by FY24.
- The Wastewater Utility fund balance has already dropped below the Utility Rate Study recommended level (365 days of operating capital) and the Water Utility will do so by FY21.
- The Wastewater Utility fund balance has already fallen to the lowest levels in recent history and the Water Utility will do so in FY21.

Having evaluated the FY16 information, the UAB has set the following goals for the upcoming fiscal year:

- Working with staff and the Assembly to identify and implement measures, primarily related to revenue, to prevent depletion of the fund balances to untenable levels.
- Working with staff to assist in the implementation of the biosolids treatment project of the Wastewater Utility.
- Working with staff to determine whether the rate model requires any adjustment, based on new information or changed conditions.

The UAB has the following recommendations for the Assembly:

- Maintain scheduled rate adjustments
- Evaluate feasibility of other revenue sources



ENGINEERING & PUBLIC WORKS DEPARTMENT

Utilities Division

2009 Radcliffe Road, Juneau, AK 99801

907.586.0393 <phone> 907.789.1681 <fax>

MEMORANDUM

DATE: 9 March 2017

TO: Leon Vance - Utility Advisory Board Chair

FROM: Samantha Stoughtenger, PE, MSE - Utilities Superintendent
Autumn Sapp - Engineering & PW Business Manager

SUBJECT: CBJ Utilities FY16 Annual Summary Report

During fiscal year 2016 (FY16), the CBJ Utilities (Water – W, Wastewater Treatment – WWT, and Wastewater Collections – WWC) produced and distributed 1.1 billion gallons of drinking water, and collected and treated 1.2 billion gallons of wastewater. The Utilities continue to morph into a responsive, fast-paced business that provides outstanding customer service while protecting the health and welfare of the environment. Financially, the organization continues to take a holistic approach to operations, spending funds wisely, and performing more in-house repairs. Organizationally, the Utilities continue to operate at lean levels as the 2015 merger changes continue to be implemented and appropriate levels of staffing assessed.

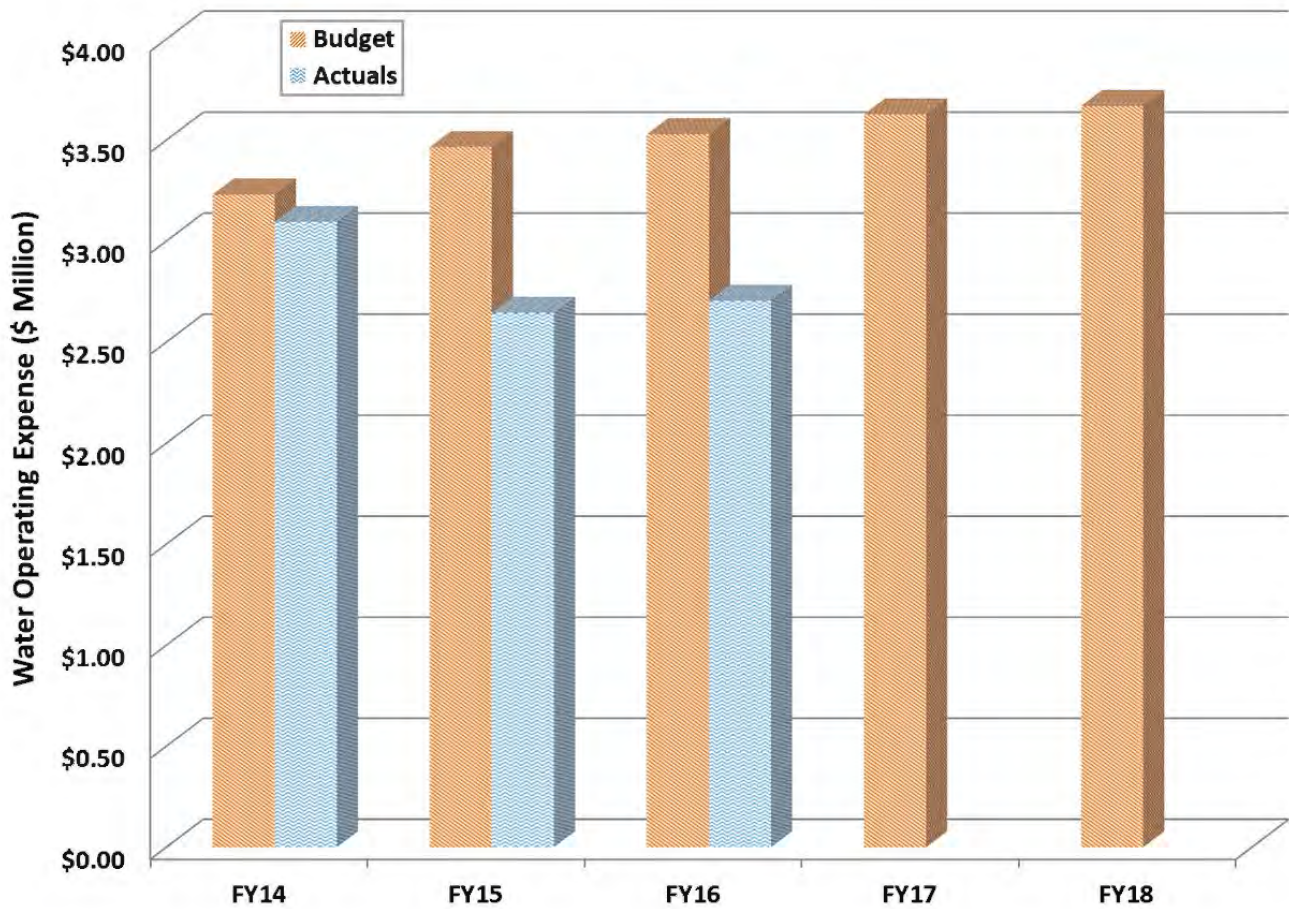
Utilities Management thought it would be helpful to the UAB, Assembly, and community at large to see a summary of annual activities and projects undertaken by the Division; as such, you will find the following sections of material:

- I. Financial Balance Sheet
- II. Operational Performance
- III. Operations and Maintenance Summary
- IV. Efficiency Improvements
- V. Notable In-House Operations Projects
- VI. CIPs under Analysis or Design
- VII. Major CIPs under Construction
- VIII. Major Asset Inventory

I. FINANCIAL BALANCE SHEET

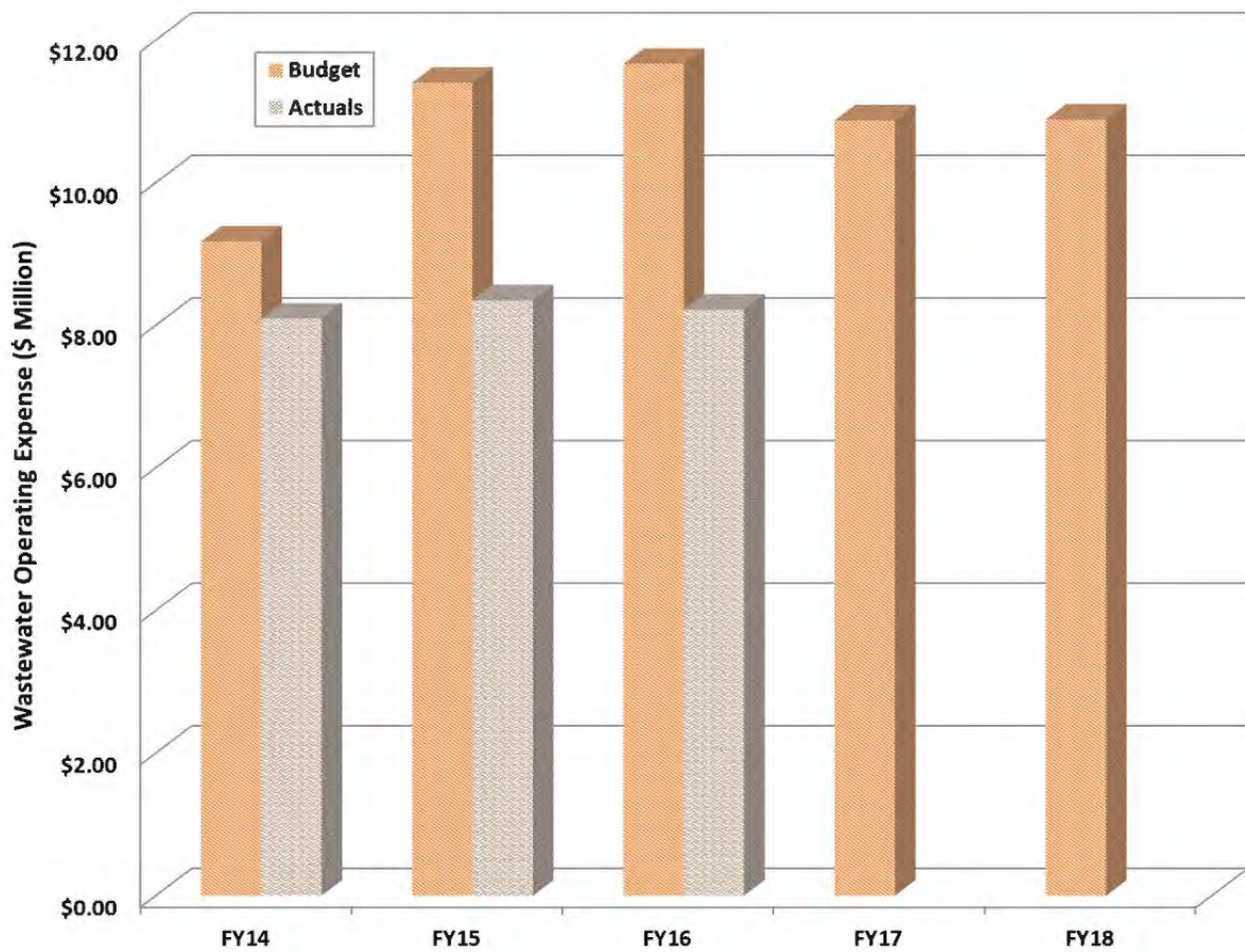
The financial status of the Water Utility and Wastewater Utility has been summarized below based on the most current information available for the close of FY16. Additionally, the annual expenditures and approved operating budgets have been shown for each utility.

Water Utility



REVENUE								EXPENSE				
	Starting Fund Balance	Water Utility Revenues	Bonds	DEC Grants	DEC Loans	Sales Tax	Passenger Fees	Rate Increase (% / year)	CIP Spending	Debt Service	Operating Costs	Ending Fund Balance
FY14		4,266,924		50,000	200,000				850,000	162,531	3,095,804	3,444,685
FY15	3,444,685	4,530,440		3,000,000	7,800,000	465,000	1,200,000	6.5	12,785,000	183,409	2,645,424	4,796,625
FY16	4,796,625	4,966,182		3,000,000		1,527,000		6.5	5,857,000	173,816	2,705,091	5,745,100
FY17	5,745,100	4,968,400			(5,270,000)			6.5	(4,380,000)	174,300	3,236,900	6,412,307
FY18	6,412,307	5,274,700						6.5	2,500,000	454,700	3,584,800	5,147,513
FY19	5,147,513	6,121,143						6.5	1,600,000	916,693	3,684,249	5,067,721
FY20	5,067,721	6,174,331	1,770,830						3,746,602	1,148,641	3,783,743	4,333,896
FY21	4,333,896	6,225,013	195,793						2,148,801	1,362,329	3,886,519	3,357,053
FY22	3,357,053	6,278,512							1,754,872	1,411,317	3,992,706	2,476,670
FY23	2,476,670	6,336,968	488,992						3,574,059	1,597,020	4,102,438	29,113
FY24	29,113	6,385,004							1,557,628	1,596,007	4,215,860	(955,379)

Wastewater Utility



REVENUE

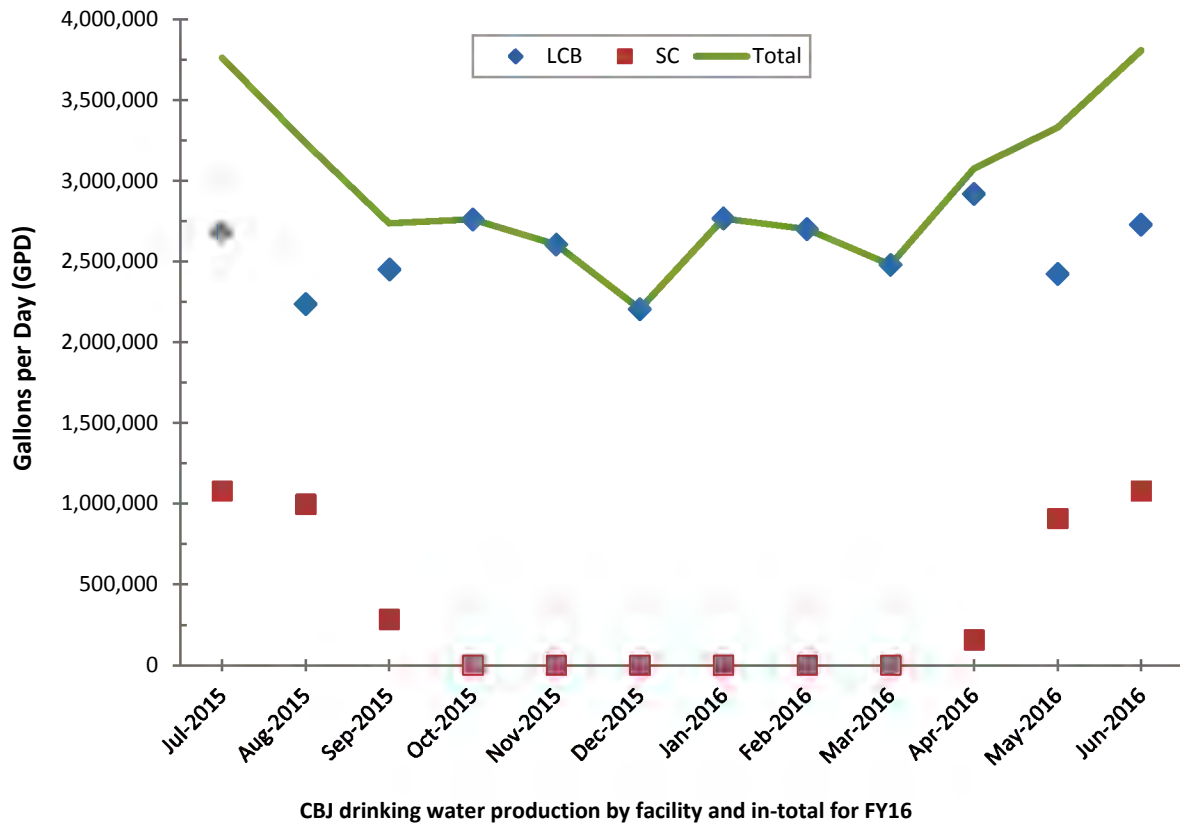
EXPENSE

	Starting Fund Balance	WW Utility Revenues	DEC Loans	Rate Increase (% / year)	CIP Spending	Debt Service	Operating Costs	Ending Fund Balance
FY14		9,572,483	1,150,000		1,500,000	587,305	8,214,378	8,265,804
FY15	8,265,804	10,088,393	23,400	8.0	23,400	645,387	8,333,707	9,538,168
FY16	9,538,168	11,417,877	10,000,000	8.0	13,940,000	581,582	8,218,974	8,361,200
FY17	8,361,200	11,191,700	10,000,000	8.0	10,550,000	573,300	10,413,700	8,015,908
FY18	8,015,908	12,042,900		8.0	4,815,000	513,100	10,539,700	4,191,016
FY19	4,191,016	13,977,368		8.0	5,845,000	600,662	10,396,803	1,325,927
FY20	1,325,927	13,982,226			3,225,000	2,192,645	10,664,247	(773,739)
FY21	(773,739)	14,025,874			2,815,000	2,151,840	10,940,014	(2,654,719)
FY22	(2,654,719)	14,074,796			2,500,000	2,144,315	11,224,424	(4,448,662)
FY23	(4,448,662)	14,142,859			3,400,000	2,136,791	11,517,799	(7,360,393)
FY24	(7,360,393)	14,216,575			3,300,000	2,025,266	11,813,437	(10,282,521)

II. OPERATIONAL PERFORMANCE

Drinking Water Production and Treatment

In FY16, the CBJ Water Utility met all of the community's water demands with no permit violations in treatment or testing. With construction of the membrane filtration system at Salmon Creek, the City's water supply was provided solely by the Last Chance Basin (LCB) wells from October 2015 to March 2016. The total water produced for FY16 was 1,108,747,000 gallons as shown in the figure below.



Wastewater Treatment

The CBJ Utilities wastewater treatment plants are regulated under the Alaska Pollutant Discharge Elimination System (APDES). Each facility's influent and effluent are sampled several times per week for reporting to the Alaska Department of Environmental Conservation (ADEC). Plant performance is determined primarily by the percent removal of biochemical oxygen demand (BOD) and total suspended solids (TSS) from the influent to the discharged effluent. FY16 plant performance data and system violations are listed below for each wastewater treatment facility.

Mendenhall Wastewater Treatment Plant (MTP)

MTP has a rated design capacity of 4.90 MGD (million gallons/day) as the maximum daily limit. All FY16 APDES permit violations were elevated fecal coliform related to UV disinfection system inefficiencies.

Date	Average Monthly Flow (MGD)	BOD Removal (%)	TSS Removal (%)	Violations
Permit Limit	Report	85	85	--
Jul 2015	2.21	96	95	0
Aug 2015	2.70	95	96	1 ^a
Sep 2015	2.87	95	91	0
Oct 2015	2.70	92	91	1 ^a
Nov 2015	2.70	95	92	2 ^a
Dec 2015	2.12	94	92	4 ^a
Jan 2016	2.15	94	94	0
Feb 2016	2.14	94	92	0
Mar 2016	1.84	93	93	0
Apr 2016	2.06	93	91	0
May 2016	2.31	95	93	0
Jun 2016	1.97	96	94	0
Summary	Av. = 2.31	Av. = 94.3	Av. = 92.8	Total = 8

a. Fecal coliform

Juneau-Douglas Wastewater Treatment Plant (JDTP)

JDTP has a rated design plant capacity of 6.0 MGD as the maximum daily limit and 2.76 MGD as the maximum monthly average. FY16 APDES permit violations for JDTP included BOD, TSS, and pH effluent exceedances. BOD and TSS violations were due to hydraulic surges into the plant. The pH violations were a result of nitrification in the clarifier basins.

Date	Average Monthly Flow (MGD)	BOD Removal (%)	TSS Removal (%)	Violations
Permit Limit	2.76	85	85	--
Jul 2015	1.30	96	92	3 ^a
Aug 2015	1.30	96	88	4 ^b
Sep 2015	1.60	99	98	0
Oct 2015	1.20	99	99	0
Nov 2015	1.32	98	99	0
Dec 2015	0.84	98	98	0
Jan 2016	2.76	98	98	0
Feb 2016	0.78	99	99	0
Mar 2016	0.69	98	97	0
Apr 2016	0.78	98	98	3 ^c
May 2016	1.00	98	98	0
Jun 2016	1.00	99	98	0
Summary	Av. = 1.21	Av. = 98.0	Av. = 96.8	Total = 10

a. BOD; TSS; TSS

b. TSS (all)

c. pH (all)

Auke Bay Wastewater Treatment Plant (ABTP)

ABTP has a rated design plant capacity of 0.16 MGD as the maximum daily limit. The plant ran very well with no reportable APDES violations in FY16.

Date	Average Monthly Flow (MGD)	BOD Removal (%)	TSS Removal (%)	Violations
Permit Limit	Report	85	85	--
Jul 2015	0.08	96	97	0
Aug 2015	0.07	95	96	0
Sep 2015	0.08	96	96	0
Oct 2015	0.07	94	98	0
Nov 2015	0.08	95	98	0
Dec 2015	0.06	98	99	0
Jan 2016	0.06	97	98	0
Feb 2016	0.06	97	98	0
Mar 2016	0.05	97	99	0
Apr 2016	0.06	95	98	0
May 2016	0.06	97	94	0
Jun 2016	0.06	97	98	0
Summary	Av. = 0.07	Av. = 96.2	Av. = 97.7	Total = 0

III. OPERATIONS AND MAINTENANCE SUMMARY

The following is a summary of the routine operational and maintenance activities, and typical service calls performed by staff throughout the Utilities for FY16.

Utilities Section	Activity	Total
Wastewater Treatment	Preventative Maintenance Work Orders	2,492
	Source Control Sampling Events	317
Wastewater Collections	Lift Station Site Visits	13,329
	Service Calls	126
	Locates	317
	Lateral Camera Inspections	53
	CCTV Inspections	89
	Adjustment/Paving Manholes	38
Water	Service Calls	175
	Locates	295
Utility Billing	Service Calls	3,581
	Bills Generated	100,837
Meters	Meter Installs	47
	Meter Services and Repairs	139
	Non-Payment Door Hangers	399
	Non-Payment Shutoffs	49
	On/Off Requests	205
	High Usage Investigations	438
	Leak Investigations	21

IV. EFFICIENCY IMPROVEMENTS

The CBJ Utilities have undertaken many efficiency improvements over the past few years. Some are global to the entire division, such as borrowing resources or equipment from other divisions/departments instead of renting, or good maintenance and upkeep of equipment/vehicles extending its useful life. The following is a list of division-wide improvements undertaken in FY16.

Water

- Hired laborers to perform routine tasks which allowed the licensed operators to focus more on system tasks and issues
- Teamed with WWC staff to share resources, specifically the vacuor truck, to quickly remove excess water and debris from waterline dig jobs

Wastewater Treatment

- MTP
 - Decanted supernatant from waste sludge tank to make a thicker sludge; this reduced polymer use and runtime of the belt filter press
 - Reduced dissolved oxygen set points to optimize blower runtime
 - Turned off lights in unused areas of the facility
- JDTP
 - Replaced impellers in aeration basin resulting in better oxygen transfer rate at lower motor speeds and lower energy usage overall
 - Installed LED lighting to replace old lights in clarifier and aeration basin buildings
 - Used smaller vehicle for completing errands
- ABTP
 - Began installation of new bleach system for chlorine disinfection to eliminate excessive bleach bottle waste and require less manpower to operate

Wastewater Collections

- Replaced strip heaters in all Flygt control panels with thermostatically controlled heaters
- Installed thermostats in all Hydronix Lift Stations for better control of settings
- Switched much of exterior lighting to LED lighting area-wide
- Installed Smart Start motor starters in two lift stations
- Revised Standard Details to use 480 volt feeds for all new/reconstructed lift stations
- Revised Standard Details to install clean outs at the property line on all projects
- Implemented systematic cleaning of all mainlines to ensure optimum performance and reduce service calls
- Identified areas with recurring blockages and odor complaints for more frequent cleaning
- Implemented Lucity asset management program for more efficient inventory tracking
- Began using fiberglass inverts in manholes for increased efficiency

Utilities Business Unit (UBU)

- UBU transferred from Lemon Creek to downtown Marine View building allowing for more responsive customer service
- Created a process for septage disposal customers to report usage and receive monthly bills

- Created and continue to develop an electronic process to review water meter usage anomalies to identify leaks, meter reading errors, and increased employee efficiency
- Created a hydrant meter rental tracking process which reduces errors and identifies which meters and are rented to whom
- Began parts inventory and tracking to eliminate duplicate purchases and increase employee efficiency to locate an item
- Began processing all account receivable billings for water and wastewater

General Administration

- Worked with ACS to audit and reconfigure phone numbers and calling tree to be more customer-friendly
- Began revising Utility websites regularly to provide updated and accurate information and to be more user-friendly
- Centralized the Utilities historical files and archives for better availability to staff
- Developed invoice tracking tools to better assess the fiscal health of the organization

V. NOTABLE IN-HOUSE OPERATIONS PROJECTS

Out-the-Road Water Main Break

In June 2016, the 16" ductile iron water main near Pt. Lena Loop Road suffered a major break due to external pipe corrosion. The team isolated the break, notified the affected customers who were without water, and called in Admiralty Construction to assist with the repair.



Water main line break and repair near Pt. Lena Loop Road

JDTP Basin Improvements

While construction of the catwalk, platforms, and handrail at JDTP was performed by a Contractor (see Section VI), CBJ WWT staff undertook the task of cleaning and preparing the basins for repair. WWT Maintenance staff replaced the aerator support columns, surface impellers and aerator motors, and interior lighting. All work occurred during the limited 54-day construction window and greatly improved JDTP's overall operational efficiency and treatment function. Throughout the course of this project, the WWT Maintenance team continued daily maintenance of the other two treatment plants while JDTP WWT operators continued effective operation of JDTP with no permit violations.



Left to right: JDTP surface impeller condition prior to replacement; new interior LED lighting

Valley Court Force Main Break

In March 2016, the Valley Court sewer force main at the intersection of Tonsgard Court and Glacier Highway sprung a leak in the early morning, sending wastewater out onto the roadway. This is the same force main scheduled for replacement in FY17 (see Section VI). The WW Collections team mobilized quickly to locate the leak and dig down on the main, completing the repair in roughly 4 hours. The hole was backfilled and resurfaced by early afternoon. This vicinity sees high usage from AEL&P, construction vehicles, and Capitol Disposal landfill clients; therefore the team worked expeditiously to maintain traffic while repairing the break.



Valley Court mainline leak located and repair sleeve installed

VI. CIPs UNDER ANALYSIS OR DESIGN

Wastewater Treatment Biosolids

Project Estimate: \$16,000,000

Equipment Vendor: Kruger (Veolia Water Systems)

Consultant: DOWL, Jensen Yorba Lott, Inc., Brown and Caldwell, Electrical Power Systems

The CBJ used the Request for Proposal (RFP) process to solicit for a biosolids dryer and site design consultant. Kruger was the selected dryer manufacturer; the contract was executed in April 2016, and shop drawings are under review for the dryer unit and associated equipment. The dryer will be sited at the MTP, requiring some site and building design by the consultant (DOWL). Improvements include

construction of a new building, pipe work, odor control, and site grading; the project plans to reuse the existing ABF building foundation.

Wastewater Treatment Headworks

Project Estimate: \$5,300,000

Consultant: DOWL, Jensen Yorba Lott, Inc., Electrical Power Systems

The CBJ selected DOWL in August 2015 through the RFP consultant solicitation process to evaluate needed headworks improvements to the MTP and JDTP. DOWL investigated the existing plant conditions and evaluated future system needs, ultimately recommending perforated plate screening and washing compactor units at both facilities. Installation of the new screens requires reconfiguration of some piping and relocation of the existing grit classifier at the MTP, and construction of new channels at the JDTP. 95% design plans have been submitted and the construction phase of the project is anticipated to be bid by October 2016. CBJ Utilities applied for an ADEC Municipal Matching Grant valued at \$1M to assist in financing this project.



Left to right: MTP existing screening (equipment to be upgraded); JDTP existing influent channel (to be abandoned)

JDTP Treatment Building Roofs

Project Estimate: \$2,400,000

Consultant: Jensen Yorba Lott, Inc., PND Engineers, Murray Associates

Roof structures for the aerator basins, digester, and clarifier buildings original to the JDTP are showing their 40+ year old age (i.e., heavily corroded and leaking). To maintain the integrity of the treatment buildings and equipment contained within, the roof structures are being redesigned for replacement in FY19/20. After thorough investigation, Jensen Yorba Lott, Inc. (JYL) developed repair and replacement options. The existing roofs will be demolished and replaced with a new steel roof structure, galvanized steel beams and deck with an insulated membrane. JYL has begun schematic design.



Left to right: exposed exterior fasteners on JDTP digester building roof; interior corrosion to clarifier building roof

Valley Court Force Main and Gruening Park Lift Station

Project Estimate: \$314,000 (Force Main only)

Consultant: DOWL, Carson-Dorn

Design is nearing completion by DOWL for replacement of the sewer force main from the Valley Court Lift Station to the bridge just past Anka Street. The 30 year old line is deteriorated and requires frequent repair; as the main runs under a heavily used roadway, it makes such repairs challenging and costly. The plan is to relocate the force main outside of the travel path in the drainage median so it is more accessible for future maintenance or needed repairs. Construction is anticipated to be completed by spring 2017. Design for relocation of the Gruening Park lift station out of the Alaska Department of Transportation (AKDOT) right-of-way is also under way; construction is anticipated to be completed by fall 2017 and primarily funded by AKDOT.

Crow Hill Fill-Line Installation

Project Estimate: \$373,295

Consultant: DOWL

Contractor: Admiralty Construction, Inc.

This is the first phase of a multiphase project to replace the existing ductile iron water fill line to the Crow Hill Reservoir with a 20" HDPE fill line. This phase includes the pump station on Douglas Highway to the Crow Hill pressure reducing valve (PRV). Design work was performed by DOWL. A portion of this project occurs on the Gastineau Elementary School property; therefore, the project was bid but construction postponed until summer 2017 when all materials are available for install and work can be completed while school is not in session.

VII. MAJOR CIPS UNDER CONSTRUCTION

It should be noted that the following construction bid costs do not include other associated project costs like design, project management, inspection, construction administration, permitting, etc.

Last Chance Basin (LCB) Wellfield Upgrades

Construction Bid Cost: \$2,100,000

Contractor: Arete Construction

Due to a 55% reduction in production capacity and the need to keep up with water demand, the LCB underwent some fairly major upgrades in FY16. Five replacement wells and two new wells were drilled.

The new wells were housed with new buildings and outfitted with piping and controls. An emergency backup generator was installed for power outages. Carson Dorn, Inc. provided the design service for this project. Since completion, this project has helped regain the drinking water production capacity needed to serve the community, especially essential during the renovation of Salmon Creek.



New well house, pumps, piping and controls in well house at LCB

Salmon Creek Water Filtration Plant (SC)

Construction Bid Cost: \$4,100,000

Contractor: North Pacific Erectors, Inc.

To meet the EPA's Long Term 2 Enhanced Surface Water Treatment Rule, two microfiltration membrane units were installed at the Salmon Creek facility. The project also required facility upgrades to the building, piping, pumps, electrical and mechanical systems. Additionally, an effluent discharge monitoring permit was acquired for discharge of the neutralized solution from the membranes cleaning process; the permit requires monthly sampling and reporting to ADEC.



Left to right: new SC water filtration building; new microfiltration membrane units

JDTP Catwalk and Platform Improvements

Construction Bid Cost: \$286,000

Contractor: Henricksen Constructors, Inc.

The JDTP has operated without significant renovation for over 40 years. As a result of several safety evaluations for general facility access, it was determined that repairs to the aeration basin and digester catwalks, platforms, and handrails were necessary. During construction, significant and previously unknown floor damage was observed in one of the aeration basins; this damage was also repaired by the contractor. All upgrades were completed in a timely manner without compromising effluent quality. The CBJ Utilities WWT Maintenance staff also performed work on these facilities.



Left to right: JDTP old catwalk over digester; new calwalk and handrails

Cope Park Phase II Improvements

Construction Bid Cost: \$250,000

Contractor: Glacier State Contractors

As part of a larger renovation to Cope Park (park upgrades and road rehabilitation), new 16" and 10" HDPE water mainlines with associated valving were installed. A temporary water system was also required to maintain service to the community during construction.



HDPE waterline installation at Cope Park

Whittier Street Road Reconstruction

Construction Bid Cost: \$200,000

Contractor: Arete Construction

As part of the road reconstruction project for Whittier Street, a 16" HDPE water main (with associated valving and services) was installed.



HDPE waterline installation on Whittier Street

VIII. MAJOR ASSET INVENTORY

The CBJ Utilities staff researched the existing assets or infrastructure for the Division as shown below. These lists are intended to show the initial capital investments for the Utilities and will undergo further refinement as time allows, when improvements are undertaken and as replacement costs are appropriately assessed.

Major Utilities Facilities

Facility	Project Description	Year	Age (yrs)	Construction Cost (\$)	Upgrade Cost (\$)
MTP	Treatment Plant	1989	19	22,687,216	
	Storage Building	1984	32	26,604	
	Jet Truck Garage	1995	21	80,800	
	Wall repair and siding	1995	21		70,251
	New Siding	1997	19		244,936
	Fencing	2002	14		7,883
	Outfall Improvements	2002	14		66,500
	Collections Building Hot Tar Roof	2012	4		12,993
	Major Mechanical and Control Repairs	2013	3		113,715
	VFD/Valve Actuator Replacement	2014	2		81,919
Total Cost:				23,392,817	

Facility	Project Description	Year	Age (yrs)	Construction Cost (\$)	Upgrade Cost (\$)
JDTP	Treatment Plant and Inceptor System	1972	39	7,823,000	
	Plant Repairs	1986	30		21,584
	Plant Repairs	1988	28		160,234
	Structural Wall Repair - Aeration Basin	1989	27		315,605
	Outfall Line Repair	1990	26		535,583
	Leasehold Improvement Creating Sludge Pit	1990	26		25,311
	Incinerator and Solids Handling Facility	1992	24	9,020,861	
	Leasehold Improvement Creating Additional Cells	1992	24		70,573
	Fence Improvement	1992	24		6,725
	New Metal Roof and Supports on Control Building	1993	23		99,899
	Incinerator Repair	1997	19		102,361
	Incinerator CO monitor and MVWWTP Blower	2002	14		272,067
	Install U.V Disinfection System	2003	13		1,718,182
	Incinerator Heat Exchanger Replacement	2003	13		253,115
	Incinerator Roof	2004	12		215,086
	Headworks Improvement	2006	10		203,000
	Clarifier Mechanism Replacement	2007	9		592,218
	Aeration Basin & Digester Structural Repairs	2008	18		20,000
	Design, Install, Program SCADA & Autodialer Upgrade	2011	5		27,559
	Aeration Basin Repairs	2012	2		58,528
	Incinerator Building Drive Through	2012	4		172,523
	Incinerator Repairs and Access Improvements	2013	2		496,704
	Infrastructure Improvements	2016	0		148,645
Total Cost:				22,359,363	
ABTP	Treatment Plant	1974	42	1,008,000	
	Plant Rehab	1984	32		51,985
	Paving	1994	22		4,935
	Headworks Improvements	2014	2		42,597
Total Cost:				1,107,517	
SC	Filtration Treatment Plant	1984	32		
	Salmon Creek Water Rights/Penn Stock	1990	26		1,000,000
	Water Pipelines	1990	26		1,069,884
	Salmon Creek Pump House	1990	26	1,310,000	
	Salmon Creek Pump Station	1992	24		28,705
	Salmon Creek Pressure Relief Valve Deconstruction	1994	22		5,393
	Salmon Creek In-line Pumps	1994	22		83,913
	Salmon Creek Disinfection Project	2000	16		3,697,004
	Salmon Creek Pump Station improvements	2005	11		169,515
	On-site Chlorine Generation Cell Replacement	2012	4		38,852
	Install Pall Filtration plant	2016	0	3,902,146	
Total Cost:				11,305,412	

Facility	Project Description	Year	Age (yrs)	Construction Cost (\$)	Upgrade Cost (\$)
LC	Water Operations Facility	1987	29	315,000	
	Facility Improvements	1989	27		7,965
	Paved Parking	1989	27		13,647
	Repair Fire Damage	1992	24		48,053
	Networking Project	1992	24		28,068
	Paint Shop Exterior	1992	24		5,200
	Cantilever Gate and Fence	1994	22		5,295
	Replace Shop Roof	1995	21		34,000
	Water Telemetry	1996	20		1,784,019
	Auxiliary power for Lemon Creek Shop	1998	18		73,076
	SCADA Upgrades	2001	15		384,509
	Remodel Utility offices	2012	4		43,044
	Lemon Creek Office Renovation	2014	2		284,018
Total Cost:				3,025,894	
LCB	Wellfield	1959	57	--	
	Well 1 & 3 Connection	1986	30		78,165
	Gold Creek Water Improvements	1993	23		3,458,894
	Gate Installation	1994	22		5,451
	Improvements	1996	20		53,818
	Wells 3 & 4	1998	18		202,352
	Water Disinfection System	2002	16		198,883
	Improvements	2005	11		1,424,449
	40kw Generator	2008	8		9,155
	On-site Chlorine Generation System	2012	4		191,344
	New Generator and Switchgear	2014	2		261,000
	Construction of Wells 6 & 7	2015	1		1,851,250
Total Cost:				7,734,761	

Field Facilities

Work Group	Facility Type	Quantity	Initial Investment (\$)	Recent Improvements (\$)	# of Units	
					<10 yrs old	>10 yrs old
WWC	Lift Stations	45	40,500,000	2,912,988	11	34
W	Reservoirs & Contact Tanks	9	15,221,546	780,219	0	9
	Pressure Reducing Valves	37	3,700,000	60,000	0	37
	Booster Stations	8	4,205,544	250,000	0	8
	Hydrants	1,448	7,240,000	10,385	50	1,398

Utility Piping (Underground, in the Right-of-Way)

Work Group	Line Type	Material	Miles	Percentage of Total Miles (%)	Pipe Size Range (inches)	Pipe Age (years)	Percentage of Total Age (%)
WWC	Gravity	PVC	105	70	8-24	< 15	80
						15-30	20
		AC	22.5	15	6-30	30-45	100
		Concrete	7.5	5	4-12	50-60	100
	Force Main	DI	7.5	5	4-12	<10	1
						10-20	4
						20-30	10
						30-40	15
						>40	2
		HDPE	7.5	5	4-20	<10	100
		PVC/C900	1	< 1%	4-6	20-30	100
	Total Miles of Pipe: 150						
	Total Manholes: 2,383						
W	Mainlines	DI	144	80	4-24	<15	30
						15-30	70
		CI	18	10	4-10	30-50	100
		HDPE	18	10	8-18	<10	70
						20-30	30
		PVC/C900		<1	8	<5	100
	Total Miles of Pipe: 180						
	Total Mainline Valves: 2,061						

ACRONYMS

ABTP	Auke Bay Wastewater Treatment Plant
ADEC	Alaska Department of Environmental Conservation
APDES	Alaska Pollutant Discharged Elimination System
BOD	Biochemical Oxygen Demand
CIP	Capital Improvement Project
JDTP	Juneau-Douglas Wastewater Treatment Plant
LC	Lemon Creek Water Buildings
LCB	Last Chance Basin
MGD	Million gallons/day
MTP	Mendenhall Wastewater Treatment Plant
SC	Salmon Creek Water Filtration Plant
TSS	Total Suspended Solids
WWC	Wastewater Collections
WWT	Wastewater Treatment
W	Water

Presented by: The Manager
Introduced:
Drafted by: A. G. Mead

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2793

A Resolution Authorizing the Sale, Possession, and Consumption of Alcoholic Beverages Within the Eaglecrest Ski Area and Repealing Resolution 477.

WHEREAS, CBJ 20.25.080(c) and (d) authorize the assembly to regulate the consumption of alcoholic beverages in certain public places by resolution; and

WHEREAS, the assembly, by Resolution 477 adopted August 11, 1977, authorized the possession and consumption of alcoholic beverages at the Eaglecrest Day Lodge when the facility is being leased to private parties; and

WHEREAS, since the adoption of Resolution 477, the Eaglecrest Ski Area now has additional facilities that may be leased to private parties; and

WHEREAS, the Eaglecrest Board of Directors has requested that the assembly authorize the sale of alcoholic beverages at Eaglecrest by an authorized, licensed vendor during the ski season.

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Alcoholic beverages may be possessed and consumed in the facilities operated by the municipality at the Eaglecrest Ski Area when any such facility is being leased by private parties, except during those times alcohol is being sold by a licensed vendor in accordance with Section 2. Private parties wishing to serve alcoholic beverages at their private events must sign a use agreement, on a form approved by the Risk Manager and Municipal Attorney, containing the following essential terms and conditions:

A. Liquor liability insurance must be secured, kept and maintained for the duration of the event in an amount deemed reasonable by the City and Borough of Juneau Risk Manager. The City and Borough of Juneau must be named as an additional insured on the policy for the duration of the event.

B. An indemnification provision approved by the Municipal Attorney.

Section 2. During the ski season when the Eaglecrest facilities are open to the public, beer, wine, alcoholic ciders, and other similar malt beverages may be sold, possessed, and consumed on licensed premises within the Eaglecrest Ski Area as authorized by the

State of Alaska in connection with a valid liquor license. The sale, possession, and consumption of distilled spirits is strictly prohibited. Authorized sales must be made by a licensed vendor holding a valid liquor license issued by the State of Alaska under contract with the City and Borough of Juneau. The contract shall be on a form approved by the Risk Manager and Municipal Attorney.

Section 3. The sale, possession, and consumption of alcohol at special events (such as the Slush Cup and High Gravity Games) is allowed as approved on a case by case basis by the Eaglecrest Board of Directors. The sale of alcohol at such events shall be made by a licensed vendor in accordance with a use agreement or permit, on a form approved by the Risk Manager and Municipal Attorney.

Section 4. The Eaglecrest Board of Directors may approve, on a case by case basis, the sale, possession, and consumption of alcohol in connection with a valid permit issued under City and Borough of Juneau Code of Regulations, Title 11, Chapter 7. The permit agreement must contain the following essential terms and conditions:

- A. Liquor liability insurance must be secured, kept and maintained for the duration of the event in an amount deemed reasonable by the City and Borough of Juneau Risk Manager. The City and Borough of Juneau must be named as an additional insured on the policy for the duration of the event.
- B. An indemnification provision approved by the Municipal Attorney.
- C. Authorized sales must be made by a licensed vendor holding a valid liquor license issued by the State of Alaska

Section 5. Effective Date. This resolution shall be effective immediately after its adoption.

Adopted this _____ day of _____, 2017.

Kendell D. Koelsch, Mayor

Attest:

Laurie J. Sica, Municipal Clerk

Date: January 12, 2017

To: Loren Jones, Chair
CBJ Human Resources Committee

From: Mike Stanley
Eaglecrest Board of Directors

Subj: Eaglecrest Alcohol Resolutions

CBJ 20.25.080(d) authorizes the assembly to regulate the consumption of alcoholic beverages in public buildings by resolution:

No person may possess or consume intoxicating liquor in any building or other similar enclosure owned or operated by the municipality except under conditions authorized by the assembly by resolution or, in the absence of such a resolution as specifically authorized by the manager; provided, that the school board or its designee may give specific authorization for the possession or consumption of alcoholic beverages in buildings and other enclosed facilities maintained by the school district.

The assembly in 1977 used this authority to adopt Resolution Serial No. 477 that, among other things, authorized possession and consumption of alcoholic beverages in the Eaglecrest Day Lodge when it is leased to private parties. The Eaglecrest Board of Directors requests that the assembly consider updating and expanding Resolution 477 in two respects.

First, the board requests that the assembly update Resolution 477 so that it applies to all facilities at Eaglecrest, not just the day lodge. The ski area now has additional facilities that may be leased to private parties (*e.g.*, for weddings), including the Porcupine Lodge and the Eagle's Nest, at which private parties may wish to possess and consume alcoholic beverages. The resolution should be worded broadly enough so that it would also apply to future facilities at the ski area, including a proposed public use cabin at Cropley Lake, outside the ski area boundary but on CBJ property, which would be managed and leased by Eaglecrest. The lease of facilities for private events at Eaglecrest is a source of revenue that the board and ski area staff have been working to expand, and allowing these private parties to possess and consume alcoholic beverages is often an important consideration in their willingness to enter into such leases.

Loren Jones, Chair, CBJ HR Committee

January 12, 2017

Page Two

Second, the board requests that the assembly use its authority in CBJ 20.25.080(d) to adopt a resolution authorizing the sale and consumption of alcoholic beverages at Eaglecrest, through contracts with licensed vendors, at events sponsored or hosted by the ski area or in areas designated by the board. Currently, sales of alcoholic beverages have been authorized by the city manager for a few specific events each year (*e.g.*, the Gravity Games), under his authority in this ordinance. The proposed resolution would authorize the ski area to continue allowing such sales without having to obtain approval of the city manager on an event-by-event basis.

The board also requests that the proposed resolution authorize sales of alcoholic beverages generally, in an area designated by the board for this purpose. The Eaglecrest Ski Area Master Plan, adopted in 2012, identified beer and wine sales as a potential revenue source. As indicated in the master plan (at pp. 85-86), public support for beer and wine sales at the ski area is high among Eaglecrest users, but less so among those who do not use the ski area. The board has since been working with staff to identify possible options for such sales, and will be prepared to discuss these options with the committee when this issue is reviewed. The board has previously indicated its support for allowing beer and wine sales at the ski area, in an informal vote, and expects to confirm its intention of moving forward with a resolution at its next regularly scheduled meeting on February 2.

The Eaglecrest board requests that this issue be placed on the agenda for the Human Resources Committee meeting scheduled for February 13, 2017. We would be happy to work with your committee (and/or the city attorney) in the drafting of a resolution (or resolutions, if the preference is to handle these requests separately). We hope the HR Committee will find in favor of a resolution as presented and forward the matter to the assembly with a positive recommendation. Thank you.



**Law Department
City & Borough of Juneau**

MEMORANDUM

TO: Borough Assembly
FROM: Amy Gurton Mead, Municipal Attorney
DATE: April 27, 2017
SUBJECT: Proposed Amendments to CBJ 49.65, Exploration and Mining Code.

Attached are three documents provided by the proposer, Jim Clark:

1. A chart outlining state, federal, and CBJ regulatory requirements;
2. An 11 page memorandum explaining the reasons for the proposed revisions (titled "Sections Removed from Current Mining Ordinance").
3. The proposed new CBJ 49.65, with a two page cover sheet ("Sections removed from Current Mining Ordinance" and "Reasons for Changes to Mining Ordinance.")

In 1986, the CBJ Assembly adopted 86-43, which amended the Land Use Code to add one code section related to "exploration and mining." In 1987, that concept was expanded upon with the adoption of a new chapter to 49.65, the Exploration and Mining part. The stated purpose of the regulations were as follows:

49. 65 .110 PURPOSE. It is the purpose of this section to foster the development of a safe, healthy, and environmentally sound mining industry while protecting the overall interests of public health, safety, and the general welfare and minimizing the surface effects of mining. This section establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct operations, and to provide for final reclamation and bond release at the conclusion of mining. This section does not include surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal, and peat or associated by-products recovered therewith.

The intent of this section is to supplement existing state and federal regulatory programs by regulation of areas of local concern which those programs do not cover.

In 1989, as a result of the recommendations made by a committee created for that purpose, the mining code was overhauled by ordinance 89-47. 89-47 is still on the books. Subsection (b) illustrates the change in policy that occurred in 1989.

49.65.110 - Purpose.

(a) It is the purpose of this article to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interests of public health, safety and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. This article establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to

conduct mining operations, and to provide for final reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface. This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith, except to the extent that such substances are developed or extracted as a mining by product in a mining operation of a large or small mine.

(b) The intent of this article is to regulate areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law. The department may require a permit to be obtained or a notice given for federally approved activities on federal lands, including unpatented mining claims, so long as the purpose of the review process is not to deny use or expressly prohibit mining, but rather the purpose of the review is to impose conditions for the protection of the environment, health safety and general welfare of the City and Borough.

The policy behind the proposed code provisions is contained in the attached memorandum from the proposers and in the stated purpose section of the revision:

49.65.110 - Purpose.

(a) The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

(b) This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

(c) The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

In addition to the documents provided by the drafter of the revisions, I have also included a strikethrough version of current code showing the proposed deletions and additions.

Due to the revised schedule, a more substantive review could not be provided. If you need more information, please let me know.

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
49.65.120 Exploration • Notice of intent to explore • Reclamation plan • Financial warranty	Forest Service Land	• 36C.F.R Part 228 • Plan of Operation to explore – FSM 2840.04 • Plan of operation includes reclamation 36.C.F.R.228.8(g) • PoO supported by NEPA document • Financial warranty required by 36 C.F.R 228.51 • CWA { 404 Permit for Wetlands	• APDES Permit for Discharges to State or Federal Waters (46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
	State Land – Surface and/or Subsurface (AS38.05.125)	• CWA{404 Permit for Wetland NEPA Review (usually EA)	• AS27.19.020-.03 (Reclamation) • AS27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • APDES permit for Discharge to State or Federal Water (46.03.050 - .120) • Title 26 Anadromous Fish (16.05.841) (16.05.871-.901) • Plan of Operations AS38.05.185 et seq. • In <i>Nunamta v. DNR</i> the Alaska Supreme Court specifically a 30 day notice and comment period and financial warranties in Miscellaneous Land Use Permit for exploration.
	CBJ as Owner of Surface and Subsurface – Assume Key requirements will	• CWA{404 Permit for Wetland NEPA Review (usually EA)	• APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	be set out in lease		Anadromous Fish (16.05.841) (16.05.871-.901) In <i>Nunamta v. DNR</i> the Alaska Supreme Court specifically a 30 day notice and comment period and financial warranties in Miscellaneous Land Use Permit for exploration. MLUP will be required to cross State tidelands.
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	CWA{404 Permit for Wetland NEPA Review (usually EA)	- APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) - Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
49.65.125 Small Mine Permits - Right to use area - Timetable, mining plan, reclamation plan, - Potential environmental, health, safety and general welfare impacts, and mitigation plan	Forest Service Land	36 C.F.R Part 228 - Plan of Operations (NEPA Review) - CWA 404 Permit for Wetlands - Plan of operation includes - PoO includes reclamation (228.8(g)) - Financial warranty required by 36 C.F.R 228.51 36 C.F.R. 228.8 covers potential mining impacts as part of PoO - Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	- APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) - Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) - Potential air permit AS46.14.120(a) and (b) - SPCC Plan - SWPPP (Stormwater) Plan - MLUP to cross tidelands

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
• Mitigate impact of mining operation • No subsidence • Financial warranty	State Land: Surface and/or subsurface (AS38.05.125)	• CWA 404 Permit for Wetland NEPA Review (usually EA) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• AS 27.19.020-.03 (Reclamation) • AS 27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • Plan of Operations or permit AS38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Potential air permit AS46.14.120(a) and (b) • Solid Waste Plan 18AAC Chapter 60 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS16.20.034
	CBJ as Owner of Surface and Subsurface put Key Requirements in Lease	• CWA {404 Permit for Wetland NEPA Review (usually EA)	• APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) • Potential air permit AS46.14.120 • SPCC Plan • Fish Habitat Permit AS 16.05.841, AS16.05.871-.901

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			MLUP for tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	- CWA {404 Permit for Wetland NEPA Review (usually EA) - Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	- APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) - Potential air permit AS46.14.120 - SPCC Plan - SWPPP (Stormwater) Plan - Fish Habitat Permit AS 16.05.841, AS16.05.871-.901 - MLUP to cross tidelands
49.65.130 Large Mine Permits - Description and timetable, - reclamation - Hazardous waste disposal - Health, safety and general welfare impacts - Feasibility study info - Application to other agencies - Socioeconomic report - Environmental impacts - No subsidence	Forest Service Land	36 C.F.R Part 228 - Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 - EIS includes socio-economics - PoO includes reclamation (228.8(g)) - Financial warranty required by 36 C.F.R 228.51 - CWA 404 Permit for Wetlands - Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	- APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) - Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) - Air permit AS46.14.120(a) and (b) - SPCC Plan - SWPPP (Stormwater) Plan - Solid Waste Permit (18 AAC Chapter 60) - Dam Safety AS 46.17.020 - MLUP to cross tidelands
	State Land – Surface and/or Subsurface (AS38.05.125)	- CWA 404 Permit for Wetland NEPA Review (EA or EIS) - Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			• AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) • Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS 16.20.034
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease	• CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			• Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	• CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
49.65.135 Standards for Issuance of Permits: • Mitigate environmental Health, safety and	Forest Service Land	• 36 C.F.R Part 228 • Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 • EIS includes socio-economics • PoO includes Reclamation	• APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • SPCC Plan

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
general welfare impacts • Meet air and water requirements • Hazardous and toxic waste • Reclamation • Local impacts		(228.8(g)) • Financial warranty required by 36 C.F.R 228.51 • CWA 404 Permit for Wetlands • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• SWPPP (Stormwater) Plan • Solid Waste Permit (18 AAC Chapter 60) • Dam Safety AS 46.17.020 • MLUP to cross tidelands
	State Land – Surface and/or Subsurface (AS38.05.125)	• CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) • Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			• MLUP to cross tidelands • Mendenhall Game Refuge AS 16.20.034
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease	• CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	• CWA 404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS 46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
49.65.140 FINANCIAL WARRANTY • Will consider financial warranty set by other agencies • Reserves right to increase if does not adequately protect the CBJ			• SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	Forest Service Land	• Financial warranty required by 36 C.F.R 228.51	• AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	State Land – Surface and/or Subsurface (AS38.05.125)		• AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease		• AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)		• AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)

SECTIONS REMOVED FROM CURRENT MINING ORDINANCE

INTRODUCTION: The purpose of this Memorandum is to explain why sections of the current Mining Ordinance should be removed. In the main it is because they duplicate, and thus add additional process layers, to what is required by Federal and State law and existing law. By doing so they increase the delay and cost of mining exploration and mining within the CBJ along with opportunities for a multi-layered sequence of litigation.

Accordingly, to avoid duplication and added delay and added litigation (to say nothing about the tremendous amount of staff time it would take to review an application under the Mining Ordinance process described below) the proposal is for CBJ staff to simply check with the relevant Federal and State regulatory agencies to determine whether or not the applicant has the needed permits. If so, the application would be submitted to the Planning Commission to decide whether or not to issue a conditional use permit.

The specific wording of the applicable Federal and State Laws and Regulations may be different in some cases from the wording of the deleted requirements of the Mining Ordinance listed below, but the environmental protections are substantially the same.

The CBJ does have the power to apply more stringent standards than those set out in Federal and State law. Indeed, the vague and undefined terms and standards used in the Mining Ordinance would allow CBJ staff to interpret them more stringently. However, the Mining Ordinance itself states that it is sufficient for the two operating mines within the CBJ to be regulated by their Federal and State permits. (CBJ 49.65.190). The proposal is for all mines within the CBJ to be regulated by the same requirements.

DNR's Office of Project Management and Permitting website partially lists Kensington and Greens Creek Mine permits, plans, and findings. These are incomplete lists of the State and Federal permits required for a mining operation in the City and Borough of Juneau.

Kensington:

<http://dnr.alaska.gov/mlw/mining/largemine/kensington/>

Greens Creek:

<http://dnr.alaska.gov/mlw/mining/largemine/greenscreek/>

The Current reclamation bonds at the mines are: Kensington \$28,727,011; Greens Creek \$72,831,187.

CURRENT LAW:

FEDERAL LAND WITHIN THE CBJ: 36 Code of Federal Regulations Part 228 governs mining activity, including exploration, on Federal Lands. Plan of Operations (PoO) within the City and Borough of Juneau (CBJ). Forest Service Manual (FSM) 2840.4 requires a Plan of Operations in advance of such exploration or mining. FSM 2840.5 (3) defines a PoO as follows:

“A written description of planned, on-the-ground mineral activities, including reclamation, to be conducted by the mineral operator for either locatable, leasable, or common variety minerals.” The PoO must be supported by a National Environmental Policy Act (NEPA) review, usually an Environmental Impact Statement (EIS).

The Forest Service requirements for environmental protection are set out in 36 C.F.R § 228.8:

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a)Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857*et seq.*).

(b)Water Quality. Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151*et seq.*).

(c)Solid Wastes. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d)Scenic Values. Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e)Fisheries and Wildlife Habitat. In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f)Roads. Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values.

(g)Reclamation. Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;

- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

Financial Warranties are required by 36. C.F.R. §228.51.

STATE LAND WITHIN THE CBJ: Article VIII, Section 11 of the Alaska Constitution provides: “Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State, which upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery location and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases and transferable licenses for their extraction. ”

AS 38.05.125 (a) reserves all subsurface minerals to the State along with the surface rights to extract them. This has been required to be part of every grant of State land or interest in State land since Statehood. Thus, with few exceptions (such as pre-Statehood patented mining claims and Regional Corporation subsurface ownership), all non-Federal land within the CBJ is governed by State mining laws.

The State’s Mining Law (AS 38.05.185 et seq.) and supporting regulations (11 AAC chapter 86) govern mining on all State Land within the CBJ. 11 AAC 86.150 requires either a land use permit or plan of operations pursuant to 11 AAC 86.800 before “conduct[ing] mineral exploration or development activities.”

AS 27.19.020 requires that: “A mining operation shall be conducted in a manner that prevents undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.” 11 AAC Chapter 97 sets out rigorous standards for reclamation, a reclamation plan, and financial warranties.

CBJ LAND: A Lease will be required from the CBJ in those cases in which it owns the subsurface rights as well as surface rights (e.g. the AJ and Treadwell Mines). Like any other mining lease, the Lease will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties.

PRIVATE LAND WITHIN THE CBJ: To the extent a private landowner owns the subsurface rights as well as surface rights (the most significant being Goldbelt’s 4000 acres of surface land ownership and Sealaska’s underlying 4000 acres of subsurface land ownership) their Lease with the mining company will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties. Activities on their land require all applicable Federal and State permits and cannot create a nuisance on adjacent land.

REGULATIONS GOVERNING ALL LAND OWNERSHIPS: A Clean Water Act § 404 permit from the Corps of Engineers is required for mining exploration and mining in wetlands,

which are hard to escape in the CBJ. The Permit must be supported by a NEPA review, usually an Environmental Assessment (EA).

An Alaska Pollution Discharge Elimination System (APDES) permit will be required under AS 46 Chapter 5 for the discharge of water to the waters of the United States or the State of Alaska. An APDES permit is required whenever there is a discharge of pollutants to surface water, including the ocean, lakes, rivers, and streams. Facilities permitted under the APDES Program include domestic wastewater treatment plants, log storage and transfer facilities, seafood processors, fish hatcheries, mines, and oil and gas facilities. APDES permits are also required for storm water, cooling water intakes and discharges, munitions, and pretreatment of industrial wastes discharged to municipal wastewater systems.

An APDES permit covers both point sources and nonpoint sources. All such permits are subject to Spill Prevention (SPCC) and Stormwater Plans (SWPPP) which act as permits for petroleum products storage and stormwater management.

An Alaska Air Permit will be required under AS 46 Chapter 14 and 18 AAC Chapter 50. AS 46.14.120 (a) and (b) require an air permit before constructing or operating a stationary source. Depending on the worst-case emissions forecast this could entail a "Minor" permit or Prevention of Significant Deterioration (PSD) permit. In any event a permit to construct based on design emissions would precede an operating permit based on actual emissions.

The Fishway (or Fish Passage Act AS 16.05.841), requires that an individual or government agency notify and obtain authorization from the Alaska Department of Fish & Game (ADF&G), Division of Habitat for activities within or across a stream used by fish if it is determined that such uses or activities could represent an impediment to the efficient passage of resident or anadromous fish.

The Anadromous Fish Act (AS 16.05.871- .901) requires that an individual or government agency provide prior notification and obtain permit approval from ADF&G before altering or affecting "the natural flow or bed" of a specified waterbody, or fish stream. All activities within or across a specified anadromous waterbody require approval from the ADF&G Habitat Division, including construction; road crossings; gravel removal; mining; water withdrawals; the use of vehicles or equipment in the waterway; stream realignment or diversion; bank stabilization; blasting; and the placement, excavation, deposition, or removal of any material.

The location of specified anadromous waterbodies is contained in the "Catalog of Waters Important for the Spawning Rearing or Migration of Anadromous Fishes." The Anadromous Waters Catalog is updated annually, and adopted into regulation (5 AAC 95.011) after public review; it is the legal record of known anadromous fish streams in the state.

Solid wastes are regulated in the State of Alaska under two main bodies of regulations:

- The Resource Conservation and Recovery Act (RCRA) federal regulations contained in Title 40 Code of Federal Regulations (CFR), Parts 260 to 279.
- The State of Alaska regulations contained in 18 AAC 60, Solid Waste Management.

Hazardous wastes are regulated by the U.S. Environmental Protection Agency (EPA), Region 10 in Alaska, in accordance with RCRA regulations. Alaska does not have the authority to administer hazardous waste regulations and, therefore, defers to federal regulations. Non-hazardous solid wastes, tailings, and waste rock are mainly managed under the state regulations in 18 AAC 60, which includes permitted solid waste inert landfills.

A Toxic Release Inventory (TRI) of tailings is required by Section 313 of EPCRA (Emergency Planning and Community Right to Know Act of 1986) at 42 U.S.C. paragraph 11001 et. seq. EPCRA is part of the Superfund Amendments and Reauthorization Act (SARA). TRI was supplemented with waste reduction rules contained in the Pollution Prevention Act of 1990 at Section 6607 42 U.S.C. paragraph 13101 et. seq.

AS 46.03.74 prohibits oil pollution: “A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may by regulation permit... .” Thus, any facility storing petroleum products must have an SPCC Plan. If there is a potential to release to Marine water a SPCC Plan must include a means to clean up, which under the Oil Pollution Act of 1990 involves contracting for regional cleanup cooperative services with a Response Contractor – in Southeast Alaska this means SEAPRO.

AS 46.03.822 imposes strict liability for a spill of a hazardous substance, the definition of which includes oil. The Comprehensive Environmental Response, Compensation, and Liability Act 42 USC §§ 9601-9675 is the Federal counterpart of AS 46.03.822. All producers of hazardous waste, which would include any operating mine, must obtain a producer ID and file reports with EPA under RCRA.

Under certain conditions DEC may authorize an Integrated Waste Management Permit (AS 46.03.100) that includes air, water, land, solid waste management coordination in order to allow for cooperative oversight by DEC and DNR to ensure consistent application of the two agencies rules and regulations in an enforceable document.

AS 46.03.820 Gives the Commissioner of DEC emergency powers to immediately terminate an activity that poses an imminent threat of irreparable damage to natural resources or the environment: “When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior

hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.”

AS 46.17.020 requires the DNR to employ a professional engineer to “supervise the safety of dams and reservoirs” in Alaska. A dam is defined as any obstruction in a waterbody greater than 20 feet in height (downstream face to crest), or 10 feet in height and impounding 50 acre-feet or more.

The State Dam Safety Engineer is the authorized representative of the commissioner of ADNR responsible for the following: Adopting regulations and issuing orders necessary for ensuring dam safety; Providing routine administration of the ADSP and the Dam Safety and Construction Unit (Dam Safety) of the ADNR; Classifying dams based on the potential hazard to lives and property created by the dam; Approving the design, construction, operation, and inspection of dams through “certificates of approval,” which are issued based on specific information submitted to Dam Safety for review; Identifying unsafe dams that compromise the mission of the ADSP, and taking the necessary steps to mitigate those risks; Raising the level of compliance for jurisdictional dams that are out of compliance with state dam safety regulations; Enforcing the dam safety statutes and regulations through appropriate legal actions, if necessary, including issuing injunctions, assuming operational control of the dam, breaching the dam, or other activities necessary to mitigate the risk; Providing information and educational material about dams in Alaska and dams in general, including the Alaska Dam Inventory, Training Aids for Dam Safety, conference proceedings, and other resources.

AS 27.19.030 requires a Reclamation Plan: a) Except as provided in AS 27.19.050 , a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(b) In reviewing a reclamation plan for state, federal, or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and landowner, uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

AS 27.19.040 requires Reclamation Financial Assurance. (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine. Subsection (b) provides a statewide bonding pool for mining operations as an alternative to individual financial assurance.

11 AAC Chapter 97 sets out in great detail what is required to comply with AS 27.19.020, .030, and .040.

49.65.120 EXPLORATION NOTICES, FINANCIAL WARRANTIES, AND PROCEDURES, RELEASE OF FINANCIAL WARRANTIES FOR EXPLORATION NOTICES

Obligating companies to obtain what amounts to a permit to simply *explore* for minerals along with a financial warranty for clean-up duplicates what is required by Current Law.

Current Law requirements are known: On Forest Service land within the CBJ a Notice of Intent must be filed under 36 C.F.R. § 228.4 and operations must be conducted pursuant to 36 C.F.R. § 228.8.

What are the CBJ criteria for conducting exploration and reclamation? While subsection (a) states: “In conducting exploration operations, the operator shall comply with all applicable federal, state and ***City and Borough laws, rules and regulations***, and such compliance shall be a condition of the effectiveness of the authority to operate under and exploration notice,” there are no clear requirements for a CBJ exploration permit. Will the CBJ be passing ordinances dealing with the manner in which exploration will be conducted? Will the CBJ be adding and training staff to conduct this review?

The extra set of permitting allows an opponent of the mine exploration to sue an agency for improvidently granting a permit under Current Law, and, if she/he loses, to sue the CBJ under the Mining Ordinance for improvidently granting the equivalent permit.

What if the Forest Service approves a PoO with which CBJ staff disagrees and CBJ staff denies the CBJ exploration permit on the ground that the applicant has failed to comply with federal law? This puts the applicant and the Federal agency in the position of potentially suing the CBJ in support of his/her Federal permit. This potentially adds layers of litigation to that which already exists with the issuance of Federal and State permits.

49.65.120(b) requires that reclamation of exploration activities be “completed in accordance with the standards of 49.65.135(b).” Except for private landowners holding both the surface and subsurface lands who are not operating in wetlands or discharging water from their operation or impacting a fish stream, reclamation is already required by Current Law described above. (See 36 C.F.R. Part 228 and 11 AAC Chapter 97).

In short, this provision which duplicates State and Federal requirements and will require the CBJ to enact rules governing exploration and reclamation will have a chilling effect on exploration in the CBJ.

49.65 125 SMALL MINE PERMITS, FINANCIAL WARRANTIES AND PROCEDURES

Again, this provision duplicates what is required by Current Law. (See 36 C.F.R. Part 228, 11 AAC 86.800, and 11 AAC Chapter 97).

This provision requires a small mine operator to prepare a description of “the potential environmental, health, safety and general welfare impacts of the operation.” How will the CBJ staff determine whether this vague, undefined language has been met? Will the CBJ be passing ordinances defining these terms?

Subsection (b) says that a small mine application shall include “a description and timetable of the mining operation, the plan for reclamation and the potential environmental health, safety, and general welfare impacts of the operation.” This language is so vague that at the end of the day it will mean whatever CBJ staff or a Court says it means.

Subsection (c) says that the staff review of a small permit mine application will include a “determination: whether air and water quality standards will be maintained in accordance with federal, state and city borough laws, rules and regulations.” On its face this section authorizes staff to determine that Federal or State agencies got it wrong when they decided that Federal and State air and water quality standards have been met and to insert staff-determined requirements into the CBJ permit.

Subsection (c) provides that if the CBJ staff is satisfied that the application contains sufficient information and analysis it is then presented to the Planning Commission for review. This creates another duplicate review along with the potential opportunity for litigation.

Subsection (d) states that “if the department determines that the proposed mining operation does not meet the standards of sections 49.65.135 and 49.15.330” the applicant can revise its plan or allow it to go forward to the Planning Commission with the negative recommendation from staff. The 49.65.135 standards duplicate what is already required by Current Law. (See discussion of 49.65.135 below).

These requirements are a recipe for endless NEPA - like litigation. For example, did the applicant fully consider and describe those environmental impacts that opponents perceive are “potential?” What are the criteria by which CBJ staff will determine whether the applicant’s mitigation measures will in fact “mitigate the adverse effects of such impacts?”

Mine opponents will put pressure on CBJ staff to find that the applicant needs to do more to comply and will sue on the ground that the applicant failed to meet the opponent’s more ambitious requirements. This is all in addition to putting pressure on State and Federal agencies to increase requirements and to sue those agencies when that pressure yields insufficient results.

The proposed changes to the Mining Ordinance would have the Planning Commission determine whether an applicant had the requisite Federal and State permits as part of its decision whether or not to issue a conditional use permit.

49.65.130 LARGE MINES, FINANCIAL WARRANTIES AND PROCEDURES

Subsection (b) requires that the Large Mine Permit application be submitted in a form that can be reviewed under the standards of subsection 49.65.135 (a). Again, the standards listed in 49.65.135 (a) duplicate those already required by Current Law. (36 C.F.R. Part 228, FSM 2840.4 and 11 AAC 86.800).

Subsection (b) also requires the applicant to provide “additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description,

and other information reasonably requested by the department in the pre-application conference held pursuant to subsection 49.15.330(b).” Subsection (c) requires the applicant to submit a socioeconomic impact assessment.

This is similar to the environmental and socio-economic information that would be included in a Forest Service EIS supporting a mining Plan of Operations and a DNR permit application for a land use plan or plan of operations. (11 AAC 86.150). It is information which the CBJ could require in the lease of the AJ or Treadwell Mines. It may be information which a private owner of the surface and subsurface estate might not wish to provide to the CBJ.

The applicant is also required to submit copies of permit applications submitted to other agencies. In short, these provisions assume that CBJ staff will have the expertise to review feasibility studies and mining plans and information in Federal and State permit applications.

Like the Small Mine section above, this Large Mine section describes the CBJ staff’s permit approval and disapproval process and recommendation for a financial warranty.

Subsection (h) provides that if an EIS is required the large mine permit will not be presented to the Planning Commission “until publication of the final environmental impact statement. The department’s recommendation may include such conditions or stipulations as the department seems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation.” In other words, CBJ staff reserves the right to add requirements to the EIS.

Subsection (h) leaves open the question of what happens if there is litigation concerning the EIS. Is the staff recommendation delayed until the litigation is complete? If so, even if an applicant prevails in NEPA litigation the application returns to CBJ staff which may add additional requirements before submitting the application with staff recommendations to the Planning Commission for review. Whatever decision is reached by the Planning Commission would itself be subject to litigation. In short, the Mining Ordinance process could extend for years after the Federal and State process.

49.65.135 STANDARDS FOR ISSUING PERMITS, CONDUCT OF OPERATIONS

This section generally requires that the applicant maintain air and water quality “in accordance with federal, state and City and Borough laws, rules and regulations.” What air and water quality rules and regulations does the CBJ have in addition to those required by federal and state law? Would such rules and regulations have to be enacted by the Assembly before an application could be filed under the Mining Ordinance?

Subsection (a)(4) requires the operator “to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion.” These matters should be taken up in the conditional use permit issued by the Planning Commission.

Subsection (a)(7) requires the operator to “negotiate and enter into a mitigation agreement with the city and borough, which agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts, including direct impacts and indirect impacts. The operator shall be responsible for mitigating the direct impacts. The city and borough shall be responsible for mitigating indirect impacts except for the costs of mitigating specific indirect impacts are filed by the manager to (A) exceed the amount of any city and borough nonproprietary revenue increase attributable to the mining operation; and (B) require direct and significant increase in local taxes or fees to adequately mitigate the impact.” What does this mean? What does it require the applicant and the CBJ to do?

Subsection (b) describes how reclamation is to be performed. This duplicates what is required by Current Law. On Federal land the mine operator is required to return the mined land to pre-existing uses or higher. State reclamation rules apply to public and private land and also requires that the land must be returned to “a stable condition.” A “stable condition” is defined by 11 AAC 97.200(a). There is an exception for private landowners who may choose to take advantage of mine facilities for future industrial uses and associated employment opportunities.

49.65.140 FINANCIAL WARRANTY

This section duplicates the bonding requirements of 36 C.F.R. § 228.8(g), AS 27.19.040, and 11 AAC 97.400.

49.65.145 TERM OF NOTICES AND PERMITS; TEMPORARY CESSATION

This provision duplicates the term of notices and permits and temporary cessation in Federal and State Current Law. Accordingly, this provision should be limited to the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

Under state law, temporary closure requires a new plan-of-operations with modifications to any and all permits to reflect changes in the operating situation. Discharges via the Waste Management Permit may be severely limited or curtailed to reflect the much reduced impacts allowed under the temporary cessation situation.

The conditional use permit should reserve the right to modify or terminate the permit depending on the significance of any change to a Federal or State permit. The conditional permit should also reserve the right to suspend its effect during a temporary cessation.

49.65.150 ANNUAL REPORTS; MONITORING; MONITORING FEE

This should be converted into a Conditional Use Permit provision requiring that an applicant submit to CBJ staff copies of reports required by its Federal and State permits.

49.65.155 (A) AND (B)(1) TECHNICAL REVISIONS. [SUMMARY APPROVAL (49.65.155 (B)(2)) REMAINS]

49.65.160 ENFORCEMENT

This section should be restored to the Mining Ordinance.

49.65.165 APPEAL

This section should be restored to the Mining Ordinance.

49.65.170 RELEASE OF WARRANTIES FOR MINING OPERATIONS

This provision duplicates Current Law. State and Federal reclamation laws allow for reclamation warranty recalculation every five years or whenever significant changes are made to the mining operation that would materially impact closure costs. (11 AAC. 97.435). These rules allow for partial warranty release as closure tasks are successfully completed.

49.65.175 SUCCESSION OPERATIONS

This provision duplicates Current Law. Transfer of permits to a new operator is subject to approval by all Federal and State regulatory agencies and written acceptance of permit provisions by the new operator. It also requires posting of a new warranty after review and recalculation – as necessary.

Accordingly, the issue of “successor operations” should be limited to transfer of the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

49.65.180 CONFIDENTIALITY

This section should be restored to the Mining Ordinance.

49.65.185 SUSPENSION OR REVOCATION OF NOTICES AND PERMITS

This section should be rewritten to say that the Commission may suspend or revoke the Conditional Use permit if a Federal or State permit is suspended or revoked. In addition the Commission may also suspend or revoke the Conditional Use permit for violation of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

SECTIONS REMOVED FROM CURRENT MINING ORDINANCE

49.65.120 EXPLORATION NOTICES, FINANCIAL WARRANTIES, AND PROCEDURES, RELEASE OF FINANCIAL WARRANTIES FOR EXPLORATION NOTICES

49.65.125 SMALL MINE PERMITS, FINANCIAL WARRANTIES AND PROCEDURES

49.65.130 LARGE MINES, FINANCIAL WARRANTIES AND PROCEDURES

49.65.135 STANDARDS FOR ISSUING PERMITS, CONDUCT OF OPERATIONS

49.65.140 FINANCIAL WARRANTY

49.65.145 TERM OF NOTICES AND PERMITS; TEMPORARY CESSATION

49.65.150 ANNUAL REPORTS; MONITORING; MONITORING FEE

49.65.155 (A) AND (B)(1) TECHNICAL REVISIONS. [SUMMARY APPROVAL (49.65.155 (B)(2)) REMAINS]

49.65.160 ENFORCEMENT

49.65.165 APPEAL

49.65.170 RELEASE OF WARRANTIES FOR MINING OPERATIONS

49.65.175 SUCCESSION OPERATIONS

49.65.180 CONFIDENTIALITY

49.65.185 SUSPENSION OR REVOCATION OF NOTICES AND PERMITS

REASONS FOR CHANGES TO MINING ORDINANCE

- 1. THE CURRENT ORDINANCE IS A BARRIER TO POTENTIAL DEVELOPMENT OF THE AJ BECAUSE IT REQUIRES CBJ STAFF TO DUPLICATE THE PERMIT REQUIREMENTS SET OUT IN STATE AND FEDERAL LAW. NO OTHER MINE IN JUNEAU OR ALASKA IS REQUIRED TO GO THROUGH SUCH A PROCESS.**
- 2. THE ENVIRONMENTAL RECORD OF THE GREENS CREEK AND KENSINGTON MINES SHOWS THAT FEDERAL AND STATE PERMITTING REQUIREMENTS ARE SUFFICIENT TO PROTECT THE ENVIRONMENT. DUPLICATION IS NOT NECESSARY.**
- 3. THE CBJ STAFF DOES NOT CURRENTLY HAVE THE EXPERTISE OR THE ARRAY OF EXPERTS NEEDED TO DUPLICATE STATE AND FEDERAL PERMIT REQUIREMENTS. IT WILL BE AN ADDITIONAL COST TO THE CBJ TO HIRE OR CONTRACT FOR THE EXPERTS REQUIRED TO DUPLICATE THE STATE AND FEDERAL PERMITTING SYSTEMS.**
- 4. THE INTERPLAY OF THE PROCESS NECESSARY TO IMPLEMENT THE CURRENT MINING ORDINANCE'S DUPLICATIVE REQUIREMENTS WITH THE PROCESSES NECESSARY TO IMPLEMENT STATE AND FEDERAL PERMITTING REQUIREMENTS WILL LEAD TO LITIGATION AS IT DID IN THE *THANE NEIGHBORHOOD ASSN* CASE (WHICH THE CBJ LOST).**
- 5. THE REQUIREMENT THAT A MINE OBTAIN A CONDITONAL USE PERMIT DEALING WITH SURFACE SUBSIDENCE, TRAFFIC, LIGHT, DUST AND NOISE REMAINS.**

Chapter 65 of Title 49 is repealed in its entirety and the following, revised Chapter 65 is enacted in its stead.

- **ARTICLE I. - EXPLORATION AND MINING**

- **49.65.110 - Purpose.**

(a)

The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

(b)

This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

(c)

The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

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- **49.65.115 - Applicability.**

(a)

There is adopted for the purpose of defining the mining and exploration surface subsidence exclusion district in the City and Borough, the Mining and Exploration Surface Subsidence Exclusion District Maps A—F, dated June 5, 2006, as the same may be amended from time to time by the assembly by ordinance. These maps, as adopted or as amended, identify the area of the City and Borough within which surface disturbance (excluding access to mining properties) or surface subsidence in support of exploration and mining activities is prohibited. Except as provided herein, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b)

Except as provided in subsection (a), this article does not regulate subsurface mining within or without the district. It is not the intent of this article to unreasonably limit or nullify private property rights.

(c)

There is adopted for the purpose of regulating exploration and mining activities within the City and Borough the Urban/Rural Mining District Map, dated June 5, 2006, depicting the Urban and Rural Mining Districts, as such may be amended from time to time by the assembly by ordinance.

- (i) Mines located in the Rural Mining District which will undergo environmental review by state agencies, federal agencies, or both, as determined by the director, shall not be subject to [Chapter 49.65](#), and shall be permitted as allowable uses pursuant to CBJ [49.15.320](#). With respect to mines in the rural mining district, the planning commission may impose conditions pursuant to CBJ [49.15.320](#)(f)(1)—(8) and additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 4, 1989; Serial No. 2003-27am, § 2, 6-16-2003; Serial No. 2006-15, § 16, 6-5-2006)

- (ii) A Mine located in the Urban Mining District that undergoes, or has undergone, an environmental review by state agencies, federal agencies, or both, and has received state or federal permits, or both, shall be permitted as a conditional use pursuant to CBJ 49.15.330. The planning commission may impose conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion that are substantially similar to conditions imposed on other entities in the City and Borough.

- **49.65.155 – Summary Approval.**

(a)

Upon request of the applicant, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

- (i) the mine is located entirely outside the roaded service area established in CBJ 01.30.320;
- (ii) the application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);
- (iii)

the proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv)

the proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(b)

The director shall make the determination required by this section within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the applicant, the time for determination may be extended for up to 20 additional days after submittal by the applicant of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(c)

Planning commission review.

(i)

The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii)

If the commission rejects the proposed summary approval, it may:

(A)

return the matter to the director for further consideration of whether the director, in consultation with the applicant, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(B)

direct that the proposed change be processed by the department as an application for an allowable use permit for which the commission may impose conditions under CBJ [49.15.320\(f\)\(1\)–\(8\)](#) and such additional conditions as are necessary to reduce to non-significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 12, 1989; Serial No. 2003-26(am), § 2, 6-9-2003)

- **49.65.160 - Enforcement.**

This article shall be enforced in accordance with chapter 49.10, article VI and section 49.65.185.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 13, 1989)

- **49.65.165 - Appeal.**

Any person who is aggrieved by a decision of the department or the commission with respect to this article, other than one under section 49.65.160, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 14, 1989)

- **49.65.185 - Suspension or revocation of a Permit**

(a) The commission may suspend or revoke the Conditional Use permit issued under this article upon a determination by the commission that a Federal or State permit previously issued to the Mine or Mining Exploration operation has been suspended or revoked.

(b) The commission may suspend or revoke the Conditional Use permit issued under this article for a substantial violation or repeated violations of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

49.65.190 - Effect of article on operations in annexed territory.

Mines and mining exploration operations occurring in territory annexed by the City and Borough which have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a permit under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements, of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator.

(Serial No. 89-47am, § 19, 1989)

ARTICLE I. - EXPLORATION AND MINING (Strikethrough version)

49.65.110 - Purpose.

(a) The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

~~It is the purpose of this article to foster the development of a safe, healthy and environmentally sound mining industry while protecting the overall interests of public health, safety and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. This article establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct mining operations, and to provide for final reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface. This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith, except to the extent that such substances are developed or extracted as a mining by product in a mining operation of a large or small mine.~~

(b) This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

~~The intent of this article is to regulate areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law. The department may require a permit to be obtained or a notice given for federally approved activities on federal lands, including unpatented mining claims, so long as the purpose of the review process is not to deny use or expressly prohibit mining, but rather the purpose of the review is to impose conditions for the protection of the environment, health safety and general welfare of the City and Borough.~~

(c) The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

49.65.115 - General applicability.

(a) There is adopted for the purpose of defining the mining and exploration surface activities exclusion district in the City and Borough, the Mining and Exploration Surface Activities Exclusion District Maps A—F, dated June 5, 2006, as the same may be amended

from time to time by the assembly by ordinance. These maps, as adopted or as amended, identify the area of the City and Borough within which surface disturbance or subsidence in support of exploration and mining activities is prohibited. Except as provided herein, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b) Except as provided in subsection (a), this article does not regulate subsurface mining within or without the district ~~except that subsidence within the district is prohibited.~~ It is not the intent of this article to unreasonably limit or nullify private property rights..

(c) There is adopted for the purpose of regulating exploration and mining activities within the City and Borough the Urban/Rural Mining District Map, dated June 5, 2006, depicting the Urban and Rural Mining Districts, as such may be amended from time to time by the assembly by ordinance. Mines located in the Rural Mining District which will undergo environmental review by state agencies, federal agencies, or both, as determined by the director, shall not be subject to Chapter 49.65, and shall be permitted as allowable uses pursuant to CBJ 49.15.320. With respect to mines in the rural mining district, the planning commission may impose conditions pursuant to CBJ 49.15.320(f)(1)—(8) and additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion.

(d) A Mine located in the Urban Mining District that undergoes, or has undergone, an environmental review by state agencies, federal agencies, or both, and has received state or federal permits, or both, shall be permitted as a conditional use pursuant to CBJ 49.15.330. The planning commission may impose conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion that are substantially similar to conditions imposed on other entities in the City and Borough.

~~49.65.120—Exploration notices, financial warranties and procedures, release of financial warranties for exploration notices.~~

(a) ~~— In order to ensure that exploration is conducted in accordance with the environmental, health, safety and general welfare concerns of the City and Borough, any operator intending to conduct or continue exploration operations other than pursuant to a previously filed exploration plan shall file with the department a notice of its intent to conduct exploration activities. Such notice shall identify, on a map on a scale of 1:63,360 or a more detailed scale, the area of and schedule for the exploration activities. The notice shall also describe the operator's plan for reclamation of the areas disturbed by its exploration activities and shall contain information as to the methodology and cost of such reclamation sufficient to enable the department to determine an appropriate financial~~

warranty. The operator shall include a processing fee, as specified in section 49.85.100, with the exploration notice. The notice shall also contain copies of any prospecting permits, notice of intent to conduct exploration, or operating plans filed with any federal or state agency with all modifications, revisions and amendments thereto. The department may require and set the amount of a financial warranty in accordance with section 49.65.140 and shall so advise the operator within 20 days after receiving the operator's notice of intent. When the operator has submitted a financial warranty in the amount set by the department and in a form satisfactory to the city attorney, the authority to operate under the exploration notice shall become effective. In conducting exploration operations, the operator shall comply with all applicable federal, state and City and Borough laws, rules and regulations, and such compliance shall be a condition of the effectiveness of the authority to operate under an exploration notice.

(b) — Upon completion of exploration activities, and all necessary reclamation, the operator shall notify the department that exploration and reclamation are complete and shall submit a map on a scale of 1:63,360 or a more detailed scale, showing the location of the exploration and reclamation activities. The department shall determine whether an inspection of the lands explored is necessary to determine whether reclamation has been completed in accordance with the standards of section 49.65.135 and, if so, shall inspect the lands explored and reclaimed within 60 days of such notification or as soon thereafter as weather conditions permit. In determining whether an inspection is necessary, the department shall consider whether there has been a state or federal inspection and whether that inspection fulfills the requirements of this section and section 49.65.135. If the department finds that the reclamation satisfies the standards of subsection 49.65.135(b), the financial warranty shall be promptly released. If the department finds that the standards have not been satisfied, it shall notify the operator within 30 days of the inspection, or the review of other agency records, of the additional steps necessary to achieve compliance with subsection 49.65.135(b). The department shall give the operator a reasonable time to complete reclamation and request another inspection, in which case the inspection, or review of other agency records, shall be repeated. If the department, after such reinspection or review, is not satisfied that the standards of subsection 49.65.135(b) have been complied with, it may declare so much of the financial warranty as necessary forfeited and, after notice thereof and an opportunity for the operator to appeal pursuant to section 49.65.165, apply the financial warranty to complete reclamation.

(c) — The requirement of a financial warranty may be waived if the department determines that a financial warranty is not necessary to ensure compliance with the requirement of this article. The waiver shall be in writing and shall set forth the reasons for the waiver.

49.65.125 – Small mine permits, financial warranties and procedures.

(a) — ~~Except as provided in CBJ 49.65.115(e), no new small mine shall commence mining operations after August 6, 1986, unless the operator shall have obtained a small mine permit pursuant to Chapter 49.15, Article III, as modified by this article. No small mine which is in operation on August 6, 1986, may remain in operation more than one year thereafter, unless the operator has submitted a permit application and the permit has not been denied.~~

(b) — ~~A small mine application shall include information establishing the right to use the affected surface, a map showing the location of the small mine and the affected surface for that small mine on a scale of 1:63,360 or a more detailed scale, and a description and timetable of the mining operation, including the mining plan, the plan for reclamation and the potential environmental, health, safety and general welfare impacts of the operation. The application shall also require a description of the measures to be taken to mitigate the adverse effects of such impacts, to mitigate adverse effects of mining operations on neighboring land, and to comply with sections 49.15.330 and 49.65.135. The map and description must indicate that there will be no affected surface within the boundary of the mining and exploration surface activities exclusion district and the narrative material must demonstrate that there will be no significant subsidence within the mining and exploration surface activities exclusion district. The application shall also include a listing of all permits applied for or granted by other agencies as well as amendments to those other applications as they are filed. To the extent that the information required by this subsection is provided in applications to other agencies, the operator may respond on its application form by cross reference to the relevant portions of those applications. Subject to the procedures of subsections (c) and (d) of this section, the requirement to provide information is continuing, and supplemental information regarding any changes in the information reasonably requested must be provided to the department throughout the duration of the application process.~~

(c) — ~~Upon receipt of an application and a processing fee pursuant to section 49.85.100, the department shall review the application, and within 35 days make a recommendation as to whether the proposed mining operation will mitigate adverse environmental, health, safety and general welfare impacts. This review shall include, but not be limited to, the following determinations: whether air and water quality standards will be maintained in accordance with federal, state, and city borough laws, rules and regulations; whether sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state and City and Borough laws, rules and regulations; whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the public and on neighboring properties such as those from traffic, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion; and whether appropriate historic sites designated by the City and Borough as significant will be protected. If the department makes a favorable recommendation, it will also make a recommendation on the amount of the financial warranty as provided in section 49.65.140. The department's~~

~~recommendations shall be forwarded to the commission for inclusion on the agenda for the next regularly scheduled meeting after notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of financial warranty pursuant to section 49.65.140. When the operator has submitted a financial warranty in the amount set by the commission and in a form satisfactory to the city attorney, the permit shall be promptly issued by the department.~~

~~(d) — If the department determines that the proposed mining operations does not meet the standards of sections 49.65.135 and 49.15.330, it shall so advise the operator, stating the reasons therefor. The operator may then either allow the department's recommendation to be forwarded to the commission pursuant to subsection (c) of this section, or revise its plans, if appropriate, and resubmit the application for processing in accordance with subsection (c) of this section. If the application is resubmitted within 180 days of the initial submission, no new application fee will be required.~~

~~49.65.130 — Large mines, financial warranties and procedures.~~

~~(a) — Except as provided in CBJ 49.65.115(e), no large mine shall commence mining operations after August 6, 1986, unless the operator has obtained a large mine permit pursuant to Chapter 49.15, Article III, as modified by this article.~~

~~(b) — The application shall be submitted in the form of a report containing sufficient information so that the department can, after reviewing the application, evaluate, in accordance with the standards of subsection 49.65.135(a), the impacts described in this subsection that the mining operation may have on the City and Borough. The application shall contain a map on a scale of 1:63,360, or a more detailed scale, a description of the mine site and affected surface; description and timetable of the proposed mining operation, including all roads, buildings, processing and related facilities; a description and timetable of proposed reclamation of affected surface; a description of proposals for the sealing of open shafts, adits and tunnels upon the completion or temporary cessation of mining operations; a description of methods to be used to control, treat, transport and dispose of hazardous substances, sewage and solid waste; and a description of other potential environmental, health, safety and general welfare impacts, as well as neighboring property impacts and measures to be taken to mitigate their adverse effects. The application shall also contain additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description, and other information reasonably requested by the department in the preapplication conference held pursuant to~~

~~subsection 49.15.330(b). The map and description must indicate that there will be no affected surface within the boundary of the mining and exploration surface activities exclusion district and the narrative material must demonstrate that there will be no significant subsidence within the mining and exploration surface activities exclusion district. The application shall include a copy of each application submitted to other agencies and a report on the current status of all such applications, as well as amendments to those other applications as they are filed. To the extent that the information required by this subsection is provided in applications to other agencies, the operator may respond on its application form by cross reference to the relevant portions of those applications. Subject to the procedures of subsections (f) and (h) of this section, the requirement to provide information is continuing, and supplemental information regarding any changes in the information reasonably requested must be provided to the department throughout the duration of the application process.~~

~~(c) — (1) — The department, in consultation with the operator, shall determine the scope and budget of a socioeconomic impact assessment. The socioeconomic impact assessment shall be prepared by the department, or both. All reasonable costs and expenses required to prepare the assessment shall be paid to the department by the operator prior to the initiation of the assessment. For the purposes of this article, the term "socioeconomic impact assessment" shall be and mean a report or study that shall address the beneficial and adverse impacts, including direct impacts and indirect impacts, of the mining operation on existing and future local conditions, facilities and services, including transportation and traffic; sewer and water; solid waste; public safety and fire protection; education, native history and culture; health; recreation; housing; employment; local businesses; the rate, distribution and demographic characteristics of any population changes induced by the mining operation; and the fiscal impacts of the mining operation on public facilities and services, including general government functions. The socioeconomic impacts to be studied must be reasonably foreseeable and demonstrable. Highly speculative impacts need not be studied. The purpose of this impact assessment shall be to provide information to the department concerning possible beneficial and adverse mining operation impact on the City and Borough, in order to allow the department to determine the extent of these impacts and how these impacts can be mitigated. The impact assessment shall be completed before the time that the department must make a recommendation on the application. Review of those portions of the application that would not be affected by information to be included in the assessment shall not be delayed while the impact assessment is being prepared for review.~~

~~(2) — The department shall waive the requirement that any operator submit particular information required by this subsection or that the impact assessment required by this subsection address certain impacts when the department determines that: such information is not essential to evaluate what impact the mining operation will have on the City and Borough; or such information has been previously provided; or such information is adequately presented in another report previously submitted to the department or another agency. The waiver shall be in writing and shall set forth the reasons for the waiver.~~

~~(d) — The department shall conduct a preliminary review of the application within 20 days of its submission and schedule promptly thereafter a meeting with the operator to request such additional information as may be necessary to make the application complete. At this meeting, the department and the operator shall establish the procedures for coordinating the review of the application with the review by other agencies of the applications submitted to them by the operator.~~

~~(e) — The fee for processing the application shall be as specified in section 49.85.100. This fee is intended to cover the City and Borough's costs of review of the application. If, after receipt of the application, the department determines that the cost of review is likely to substantially exceed such fee the department may, after consultation and discussion with operator, recommend an additional fee to the assembly. Such additional fee shall be approved by the assembly by motion and shall be set in an amount that will, as far as can be determined, cover the cost of review of the application, including reasonable administrative and overhead expenses. In recommending the additional fee, the department may consider, among other factors: that proper review will require the department to retain outside professional assistance either to review the application or to perform original study and research; that significant staff effort will be required by the department to adequately review the application; the involvement in the review process of other governmental agencies, either through a federal environmental review process or other procedure; the necessity for extraordinary travel and transportation costs that may be incurred by the department during review; the potential benefit of information generated by the application review to other mining operations or to the City and Borough; and the necessity for extraordinary communication, duplication or publication costs arising from the review.~~

~~(f) — Unless the operator agrees to an extension, within 90 days after the department has received all additional information requested at the initial meeting described in subsection (d) of this section and the fee has been established, the department shall complete its review of the application, unless an Environmental Impact Statement (EIS) is required by the National Environmental Policy Act (NEPA). If an EIS is required, then the timing of the review of the application shall be in accordance with the provisions of subsection (h) of this section. The application review shall include the following determinations: whether air and water quality will be maintained in accordance with federal, state and City and Borough laws, rules and regulations; where sewage, solid waste, hazardous and toxic material will be properly contained and disposed of in accordance with federal, state and City and Borough laws, rules and regulations; the extent to which the operator will agree to mitigate adverse impacts on the City and Borough; whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and will mitigate adverse impacts on the public and on neighboring properties such as those from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion; and whether appropriate historic sites will be protected. The department shall form a recommendation as to whether the permit should be approved~~

~~and, if so, it shall make a recommendation on the amount of the financial warranty as provided in section 49.65.140. The department's recommendation may include such conditions or stipulations as the department deems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation. The department's recommendations shall be provided to the operator and forwarded to the commission where the matter shall be placed on agenda for the next regularly scheduled meeting after notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of the financial warranty.~~

~~(g) — If the department determines that the proposed mining operation does not meet the standards of sections 49.65.135 and 49.15.330, it shall so advise the operator, together with the reasons therefor. The operator may then either withdraw its application or allow the department's recommendation to be forwarded to the commission pursuant to subsection (f) of this section. If the application is withdrawn, it may be revised and submitted within 180 days upon payment of an additional processing fee as determined by the department to be reasonably necessary to defray its cost of reviewing the revised application to the extent that it is different from the original submittal. Revised applications shall be processed in accordance with the procedures set forth in subsections (d), (e), (f) and (h) of this section.~~

~~(h) — In order to prevent duplication of studies and to avoid premature decision-making, if an EIS is required to be completed on the mining operation pursuant to NEPA, then the application will not be considered to be complete until the draft environment impact statement (DEIS) is concluded. The department will begin its review of the application upon its filing. The operator shall advise the department immediately at any time during the application process or thereafter if NEPA is involved so that the City and Borough may participate in the NEPA process. The DEIS, the final environment impact statement and all comments and testimony related thereto will be considered as part of the application. The department may, before the final environment impact statement is complete, prepare its recommendation as to whether the permit should be approved. If the department prepares its recommendation before the final environment impact statement is complete, the recommendation shall not be presented to the commission until the department has considered the final environment impact statement in its recommendation. The department's recommendation shall not be presented to the commission until publication of the final environment impact statement. The department's recommendation may include such conditions or stipulations as the department deems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation. The department shall also recommend the amount of the financial warranty as provided in section 49.65.140. The department's recommendation shall be provided to the operator and forwarded to the commission where~~

~~the matter shall be placed on the agenda for the next regularly scheduled meeting after the final environment impact statement is complete and a notice has been published as provided in section 49.15.230. The application shall then be heard as a conditional use application as provided in chapter 49.15, article III, as modified by this article. If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of sections 49.65.135 and 49.15.330, it shall approve the application and set the amount of the financial warranty.~~

~~(i) — After a permit has been approved by the commission, a financial warranty in the amount set by the commission has been submitted in a form satisfactory to the city attorney, and the operator has agreed to such conditions as are deemed appropriate by the commission, the department shall promptly issue a permit.~~

~~49.65.135 — Standards for issuance of permits and conduct of operations.~~

~~(a) — In determining whether to recommend issuance of a permit, the department shall require that:~~

~~(1) — The mining operations be conducted in accordance with this article, section 49.15.330, and any other applicable provisions of the City and Borough Code in such a way as to mitigate adverse environmental, health, safety and general welfare impacts;~~

~~(2) — Air and water quality be maintained in accordance with federal, state and City and Borough laws, rules and regulations;~~

~~(3) — Hazardous and toxic materials, sewage, and solid waste be properly contained and disposed of in accordance with applicable federal, state and City and Borough laws, rules and regulations;~~

~~(4) — The operator conduct all mining operations according to the standards of the City and Borough as contained in this article, section 49.15.330, the permit and any other applicable provisions of the City and Borough Code, so as to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;~~

~~(5) — Appropriate historic sites designated as significant by the City and Borough be protected;~~

~~(6) — Reclamation of the affected surface be in accordance with the approved reclamation plan of the operator; and~~

~~(7) — With respect to a large mine permit application, the operator negotiate and enter into a mitigation agreement with the City and Borough, which agreement shall establish~~

~~responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts, including direct impacts and indirect impacts. The operator shall be responsible for mitigating the direct impacts. The City and Borough shall be responsible for mitigating indirect impacts except where the costs of mitigating specific indirect impacts are found by the manager to:~~

~~(A) — Exceed the amount of any City and Borough nonproprietary revenue increase attributable to the mining operation; and~~

~~(B) — Require a direct and significant increase in local taxes or fees to adequately mitigate the impact.~~

~~Highly speculative impacts shall not be included in the mitigation agreement. Taxes and nonproprietary revenues generated as a result of the proposed mining operation shall be a factor considered in negotiating the mitigation agreement. This agreement shall be incorporated as part of the permit. This subsection does not limit or otherwise affect the authority of the department or the commission to condition or place stipulations on a permit pursuant to this article or the conditional use process as provided in chapter 49.15, article III.~~

~~(b) — Reclamation of all affected surfaces shall be completed as soon as is reasonable after affected surface areas are no longer being used in exploration and mining operations. Reclamation shall include the following:~~

~~(1) — Cleanup and disposal of dangerous, hazardous or toxic materials;~~

~~(2) — Regrading of steep slopes of unconsolidated material to create a stable slope;~~

~~(3) — Backfilling underground shafts and tunnels to the extent appropriate;~~

~~(4) — Adequate pillaring or other support to prevent subsidence or sloughing;~~

~~(5) — Plugging or sealing of abandoned shafts, tunnels, adits or other openings;~~

~~(6) — Adequate steps to control or avoid soil erosion or wind erosion;~~

~~(7) — Control of water runoff;~~

~~(8) — Revegetation of tailings and affected surface areas with plant materials that are capable of self regeneration without continued dependence of irrigation and equipment where appropriate;~~

~~(9) — Rehabilitation of fisheries and wildlife habitat; and~~

~~(10) — Any other conditions imposed by the commission.~~

Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the operator's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the operator's plans submitted with the permit application or the notice.

(c) — In the event mining operations violate or threaten to violate this article, section 49.15.330, or a permit issued under this article, the operator shall notify the department of such fact and of the steps to be taken to return to compliance, or resolve the potential noncompliance.

49.65.140 - Financial warranty.

(a) — No permit shall be issued or exploration authorized pursuant to this article, until any financial warranty required has been submitted by the operator, approved by the city attorney, and accepted by the department. The purpose of any financial warranty shall be to ensure that, during all phases of exploration or a mining operation, the operator will carry out all those obligations or requirements of the permit or conditions of an exploration notice, which are necessary to protect the environmental, health, safety, general welfare and reclamation requirements of the City and Borough, or that, if the operator does not carry out those obligations, there will be sufficient funds available to the City and Borough to enable it to complete the necessary work, taking into account the financial warranties which the operator must submit to other agencies. The department reserves the right to seek forfeiture of the financial warranty, in whole or in part, in the interest of protecting the environmental, health, safety and general welfare requirements of the City and Borough if it determines that the operator has violated the obligations or requirements of the permit or the conditions of an exploration notice. The forfeiture shall be limited to the extent necessary to satisfy the requirements or conditions that the operator has violated.

(b) — The amount of financial warranty for an exploration notice shall be set by the department. The amount of financial warranty for small mines and large mines shall be determined by the commission. The amount of the financial assistance of the department and the engineering department, to be required to ensure the performance of the requirements of the permit or conditions of an exploration notice as set forth in subsection (a) of this section. In recommending and setting the amount of the financial warranty, the department and the commission, respectively, shall take into consideration the amount and scope of any financial warranties which have been submitted to other agencies. When the performance of such obligations is guaranteed by financial warranties that have been submitted to other agencies, the operator may be required to post a separate financial warranty with the City and Borough if the city attorney determines that the financial warranty submitted to another agency does not create a lien or interest sufficient to protect the interests of the City and Borough. Examples of obligations to be covered by the financial warranty required under this section include but are not limited to;

~~(1) — Construction of berms, dikes, spillways, channels or other facilities to control, detain, retain or reduce runoff, soil erosion and siltation, or to divert water around waste, tailings, stockpiles or other facilities or disturbed areas;~~

~~(2) — Installation and maintenance of landscaping, including berming, tree planting and other required grading or planting to provide visual and sound barriers and to eliminate or reduce the appearance of scarring;~~

~~(3) — Installation and maintenance of road or highway improvements to mitigate the impact of increased traffic or heavy trucking which is measurable and directly attributable to the mining operation; such facilities may include speed access ramps or lanes, turn lanes, intersection improvements, traffic control devices or private haulage ways where necessary to avoid the use of public roads or highways. The cost of installation or maintenance described in this subsection shall be shared by the operator and the City and Borough in relation to the proportion of the directly attributable and measurable impact on traffic of the operator's activities or the facilities being maintained, installed or improved;~~

~~(4) — Reclamation of affected surfaces during and following exploration and mining operations;~~

~~(5) — Regrading of steep slopes of unconsolidated materials to create a stable slope;~~

~~(6) — Installation of facilities required to prevent or reduce degradation of air or water quality or to contain or control toxic or hazardous wastes;~~

~~(7) — Removal of buildings, structures or equipment where appropriate;~~

~~(8) — Such other obligations as necessary to conform with the commission's determinations under subsection 49.15.330(f) and (g) and subsection 49.65.135(a) and (b)~~

~~(e) — The financial warranty required under this article for a large or small mine permit or an exploration notice may be in any one or a combination of the following forms at the option of the operator; provided, that the cumulative amount is equal to the amount provided in subsection (b) of this section:~~

~~(1) — Cash;~~

~~(2) — Certificate of deposit;~~

~~(3) — An irrevocable standby letter of credit from a United States bank; or~~

~~(4) — A surety bond from a bonding company licensed to do business in the state which is satisfactory to the department for credit worthiness. Interest on cash deposits or certificates of deposit will accrue to the credit of the operator.~~

~~(d) — In addition to the forms of financial warranty set forth in subsection (e) of this section, with respect to a small mine permit or an exploration notice, the operator may elect~~

~~to use a property bond as a form of financial warranty; provided, that at least ten percent of the total amount of the financial warrant shall be cash or a certificate of deposit; and provided further, that the commission determines that the value of the property is equivalent to the amount required to be generated for satisfaction of the obligation and the city attorney determines that the bond creates a lien with sufficient priority to permit its collection should such become necessary.~~

~~(e) — The form of financial warranty shall provide that the funds may be used by the City and Borough to satisfy the obligations described in subsections (a) and (b) of this section when there has been a determination by the department that the operator has not completed its obligations in a timely manner or has otherwise violated the terms of its permit or conditions of its exploration notice, and after notice and opportunity to perform the obligation has been given to the operator.~~

~~(f) — The amount of the financial warranty shall be reviewed annually by the department, and a determination shall be made whether the amount should be increased or decreased, taking into account changes in the obligations of the operator to be undertaken during the ensuing year, cost of current obligations of final reclamation, and changes due to inflation of deflation.~~

~~(g) — If the amount of financial warranty is to be increased or decreased by the determination made in subsection (f) of this section, then the actual increase or decrease shall be made according to the procedure in subsection (b) of this section.~~

~~49.65.145 — Term of notices and permits; temporary cessation.~~

~~(a) — Exploration notices and permits for mining operations shall remain in effect for the duration of the operation, as stated in the notice or in the application, subject to the conditions of this section; and provided, that the following conditions are met:~~

~~(1) — The financial warranty must remain in full force and effect;~~

~~(2) — The operator must not be found to be in substantial violation of this article; and~~

~~(3) — With respect to a large or small mine permit, mining operations must be continued in accordance with the plan contained in the application for at least 90 days in each year as to a large mine, and for at least 30 days in each year as to a small mine.~~

~~(b) — During the term of any exploration notice or permit, the department may, pursuant to subsection 49.65.140(f), revise the amount of the financial warranty. If the amount of financial warrant is increased, the operator shall submit the appropriate amount of additional financial warranty within 60 days of the department's determination.~~

~~(c) — The operator shall advise the department within ten days of the date upon which the operator receives notice that a financial warranty which has been submitted to any other agency is reduced or released.~~

~~(d) — If at any time during the term of a permit, the operator determines that it will not conduct mining operations for the applicable time minimums established in subsection 49.65.145(a)(3), it shall notify the department of that intent and request that its mining operation be placed in an inactive status. In conjunction with this notification, and as a condition to granting a request for inactive status, the operator shall advise the department of the measures it will employ to prevent hazardous or dangerous conditions, erosion or other environmental damage which may result from the operator's activities, and the security measures it will employ at the mining operation during the inactive period. An operator may continue in inactive status for a five year period and may, with the permission of the department, obtain successive five-year extensions of that status. At the conclusion of inactive status, the operator shall either resume operations or commence final reclamation in accordance with its plans. If an operator ceases operations for more than one year but does not request inactive status, the department may require the operator to commence final reclamation in accordance with its plans.~~

~~(e) — Throughout the duration of a large mine permit, the operator of a large mine shall also notify the department not less than 60 days prior to requesting placement on inactive status. The operator and the City and Borough shall maintain a process to exchange information regarding the impact on the City and Borough that may result from a change in mining operations. In addition, the operator shall provide the department with copies of any notification it may be required to provide to federal agencies under federal law concerning proposed personnel layoffs at its mining operation. The department may waive any of these notification requirements in the event of an unforeseen act of God or disaster.~~

~~49.65.150 — Annual reports; monitoring; monitoring fee.~~

~~(a) — During the term of each exploration notice, the operator shall submit annual progress reports to the department on or before March 31 of each year and shall describe the areas in which exploration was conducted during the preceding year, the amount of acreage which was disturbed by such exploration, and the nature and extent of associated reclamation activities.~~

~~(b) — During the term of each small mine permit or large mine permit, including any inactive period, the operator shall submit an annual progress report to the department on or before March 31 of each year describing the status of the mining operation in relation to the mining plan and timetable in the application, and describing reclamation activities during the year.~~

~~(c) — The department shall have ongoing authority to monitor any mining operation for which a permit has been issued in order to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit. The operator shall, upon reasonable notice, provide the department with access, at reasonable times, to the premises and to the records of the mining operation to the extent such access to the premises and records is necessary to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit.~~

~~(d) — Throughout the duration of the term of a small mine permit or a large mine permit, the operator shall pay to the department an annual monitoring fee to defray the costs of inspecting and reviewing the affected surface and compliance with the permit. The annual monitoring fee shall be such amount as may be established by the commission as necessary to cover the reasonable costs of inspection and review.~~

49.65.155 - Technical revisions, summary approval, and amendments.

~~(a) — During the term of a permit, the operator shall notify the department of all technical revisions to its operations. As used in this section a "technical revision" is a change in operations which does not, in the judgment of the department, have more than a minor effect on reclamation and which does not change the total amount of disturbance or the overall environmental or socioeconomic impact of the mining operation. After the technical revision is submitted to the department, the department shall within 30 days determine and notify the operator whether a permit amendment or summary approval of the change is necessary or whether the technical revisions may be accomplished under the operator's existing permit.~~

~~(b) — If the operator or the department determines that the change to the mining operations will require preparation of a new or supplemental environmental impact statement, or will increase the acreage of affected surface or otherwise have a significant effect on reclamation or the environmental or socioeconomic impact of the mining operation, the permit shall be amended, unless summary approval of the change is granted pursuant to (b)(2) of this section.~~

~~(1) — Except as provided in subsection (2) of this section, the operator shall file with the department an application for amendment to its original permit, together with an application with the same content as required for an original application, except that no operator will be required to resubmit any information which duplicates applicable previous submittals. The permit amendment application shall be processed in accordance with the same procedure as established for processing permits under sections 49.65.125, 49.65.130 and 49.65.135. The operator shall not commence changes requested in its amendment~~

~~application until the permit amendment has been approved and, if appropriate, additional financial warranties submitted.~~

(a) ~~(2)~~ Summary approval.

(a) Upon request of the applicant, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

(i) the mine is located entirely outside the roaded service area established in CBJ 01.30.320;

(ii) the application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);

(iii) the proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv) the proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(b) The director shall make the determination required by this ~~section~~ subsection (2) within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the applicant, the time for determination may be extended for up to 20 additional days after submittal by the applicant of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(c) Planning commission review.

(i) The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii) If the commission rejects the proposed summary approval, it may:

(A) return the matter to the director for further consideration of whether the director, in consultation with the applicant, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(B) direct that the proposed change be processed by the department as an application for an allowable use permit for which the commission may impose conditions under CBJ 49.15.320(f)(1)—(8) and such additional conditions as are necessary to reduce to non-

significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

49.65.160 - Enforcement.

This article shall be enforced in accordance with chapter 49.10, article VI and section 49.65.185.

49.65.165 - Appeal.

Any person who is aggrieved by a decision of the department or the commission with respect to this article, other than one under section 49.65.160, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

~~49.65.170 - Release of warranties for mining operations.~~

~~(a) — Upon completion of mining operations, the operator shall file a written notice of completion with the department when it believes it has completed any or all requirements of this article, section 49.15.330 and its permit with respect to any or all of its affect surfaces. The department shall, within 90 days after receiving the notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine whether the operator has complied with all applicable requirements.~~

~~(b) — If the department determines that the operator has successfully complied with all the requirements of this article, section 49.15.330 and the permit, it shall release all financial warranties applicable to said requirements. Release shall be in writing and shall be delivered to the operator promptly after the date of such filing.~~

~~(c) — If the department finds that the operator has not complied with the requirements of this article, section 49.15.330 or the permit, it shall so advise the operator not more than 90 days after the date of the inspection. The operator shall be given a reasonable time to comply with requirements before a second inspection. If the operator does not complete the requirements, or if after reinspection the department is not satisfied that the operator has complied with all the requirements of this article, section 49.15.330 or the permit, the financial warranty shall be subject to forfeiture to the extent necessary to satisfy any outstanding requirements.~~

~~49.65.175 - Successor operators.~~

~~Any operator desiring to transfer its rights under an exploration notice, a small mine permit, or a large mine permit shall submit to the department a request for transfer. This request shall identify the name and address of the new operator. The department may approve in writing the request for transfer if it finds that: the proposed operator will conduct the operations covered by the notice or permit in accordance with the requirements of this article and any additional requirements set by the department; the proposed operator has submitted a financial warranty at least equivalent to the financial warranty of the original operator such other amount as may be determined using the procedures in section 49.65.140; the proposed operator will continue to conduct the operations involved in full compliance with the terms and conditions of the original notice or permit; and all obligations and responsibilities undertaken by the original operator shall be accepted and assumed by the proposed operator. The department may deny approval of the request for transfer if the original operator has any existing notice or permit violations at the time of the request until such time as the violations have been remedied. If the department approves the transfer the financial warranty submitted by the original operator shall be released.~~

~~49.65.180 — Confidentiality.~~

~~Upon request of any operator, information in any application or report relating to the location, size, grade, geology or geochemistry of any ore deposit, proprietary process information, or information as to cost of mine construction or operation shall be kept confidential by the department to the extent permitted by AS 09.25.110, AS 09.25.120 or other applicable law. Information to be maintained as confidential must be separately presented to the department and must be marked "Confidential."~~

49.65.185 - Suspension or revocation of a notices and permits.

(a) The commission may suspend or revoke the Conditional Use permit issued under this article upon a determination by the commission that a Federal or State permit previously issued to the Mine or Mining Exploration operation has been suspended or revoked.

The commission may suspend or revoke the Conditional Use permit issued under this article for a substantial violation or repeated violations of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

~~Subject to the procedures of this section, the commission may suspend or revoke a permit issued under this article, or the authority to operate under an exploration notice pursuant to section 49.65.120, upon a determination by the commission that:~~

~~(1) — The exploration of mining operations are not in material and substantial compliance with the requirements of the exploration notice or permit and such material and substantial noncompliance remains unremedied after issuance of a compliance order issued pursuant to section 49.10.620; or~~

~~(2) — The exploration of mining operations under the notice or permit have a history or pattern of intentional or grossly negligent noncompliance and compliance orders have previously been issued for such past events of noncompliance. Good faith efforts to remedy events of noncompliance shall create an inference that such noncompliance is not a cause for suspension or revocation.~~

~~(b) — The department shall provide the operator with written notification that it is recommending that the commission consider the entry of a suspension or revocation order under subsection (a) of this section. The written notification shall set forth the reasons for the department's recommendation and the operator's right to a hearing before the commission. The commission shall schedule a hearing within 30 days after the operator has received the written notification. At the hearing, the department shall have the burden of establishing that the operator is not in material and substantial compliance with the permit or authority to operate under an exploration notice, or that there is a past history or pattern on noncompliance sufficient to justify suspension or revocation.~~

~~(c) — Upon written notification of the entry of a suspension or revocation order to the operator or to any person operating under the authority of the permit or exploration notice, all exploration or mining operations shall cease except those specifically authorized by the commission in the order or except if the assembly stays the order pending appeal.~~

~~(d) — A suspended notice or permit may be reinstated by the commission upon a determination that the exploration or mining operations have been brought into compliance with the conditions of the notice or permit. A notice or permit which has been revoked may not be reissued by the commission until the commission determines that the exploration or mining operation has been brought into compliance with the terms and conditions of the notice or permit, and the operator has clearly and convincingly demonstrated that preventative measures have been taken to ensure that those conditions which gave rise to the revocation will not reoccur.~~

~~(e) — A suspension or revocation order may be appealed to the assembly in accordance with chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of suspension or revocation.~~

~~(f) — The rights of suspension or revocation provided for in this section are in addition to any rights or powers vested in the City and Borough in section 49.65.160 or chapter 49.10, article VI.~~

49.65.190 - Effect of article on operations in annexed territory.

Mines and mining ~~Large mine, small mine and exploration~~ operations occurring in territory annexed by the City and Borough which have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a large mine permit, a small mine permit, or an exploration notice, as applicable, under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements, of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator. ~~The terms of the City and Borough permit or notice shall be deemed to be the terms of the state and federal permits or approvals, unless and until a permit amendment is required. The operator shall be required to execute documentation acknowledging that the permit or notice deemed to be issued under this article shall have the same terms as the federal and state permits or approvals unless and until a permit amendment is required, and that the operator, and the permit or notice deemed issued, shall be subject to all of the requirements of this article in effect upon the effective date of annexation with the exception of the initial permit application and exploration notice filing requirements.~~

~~49.65.195 - Severability.~~

~~If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the article. The City and Borough declares that it would have enacted this article and each and every part thereof, irrespective of the fact that any one or more parts might be held unlawful or otherwise invalid.~~