

ORDINANCE NO. 2014-04

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING THE DILLINGHAM MUNICIPAL CODE TO CONSISTENTLY APPLY THE TITLE OF SIX YEAR CAPITAL IMPROVEMENT PLAN

WHEREAS, the Dillingham Municipal Code refers to the Six-Year Capital Improvement Plan by several different titles;

WHEREAS, the Dillingham City Council believes cleaning up these titles would be appropriate;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Chapter 4.05. Chapter 4.05. of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and deletions are shown as ~~strikethrough.~~)

2.72.070 School district—Facilities.

D. The committee shall:

- 6. Conduct an annual review of the maintenance master plan including ~~of~~ the six-year capital improvement plan ~~that is~~ included therein;

2.68.160 Duties and functions.

A. The planning commission shall prepare and recommend to the city council the following:

- 5. An annual update of a six-year capital improvement ~~projects~~ plan;

4.05 Definitions.

As used in this chapter:

B. ~~Five~~Six-year capital improvement plan ~~program~~” means an annual update and long-range need projection of the city included as a part of the annual budget.

4.05.040 Adoption of legislative priorities, capital improvements plan ~~program~~.

The council shall hold public hearings annually in conjunction with the adoption of legislative priorities. The ~~five~~six-year capital improvements plan ~~program~~ shall be held in conjunction with the annual budget public hearings.

4.05.070 Submission of legislative priorities, capital improvements plan ~~program~~.

The ~~five~~six-year capital improvement plan shall be submitted ~~by second Thursday of September in 1985 and thereafter~~ annually in May ~~June~~ as a part of the fiscal budgeting process. The preliminary legislative priority list shall be submitted to the council by the first Thursday of August ~~October~~.

Section 3. Effective Date. This ordinance shall be made effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on
_____.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

Subject: An ordinance of the Dillingham City Council amending the Dillingham Municipal Code to consistently apply the title of six-year capital improvement plan throughout the code

Agenda of: April 3, 2014

Council Action: Council introduced Ordinance 2014-04 at their March regular Council meeting.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	Planning / Jody Seitz	JS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Public Hearing is scheduled to be advertised in the March 27, 2014 edition of Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing.

Summary Statement.

This ordinance was recommended by the Planning Director as a house-cleaning item.



NOTICE OF A PUBLIC HEARING

Public Hearing on Ordinance Nos. 2014-04 and 2014-05 (SUB-1)

The City Of Dillingham will hold a **Public Hearing** on Thursday, April 3, 2014, at 7:00 P.M. in the City Council Chambers for the purpose of taking comment from the public on the following ordinances:

- Adopt Ordinance No. 2014-04, An Ordinance of the Dillingham City Council Amending the Dillingham Municipal Code to Consistently Apply the Title of Six Year Capital Improvement Plan
- Adopt Ordinance No. 2014-05 (SUB-1), An Ordinance of the Dillingham City Council Amending Chapter 4.15 of the Dillingham Municipal Code to Allow Limited Exceptions to the Deadline for Filing an Assessment Valuation Appeal and Defining the Circumstances in Which a Request for Such an Exception Will be Considered and Granted

If you have any questions, please contact the City Clerk's office at 842-5212 or email cityclerk@dillinghamak.us.

ORDINANCE NO. 2014-05 (SUB-1)

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING CHAPTER 4.15 OF THE DILLINGHAM MUNICIPAL CODE TO ALLOW LIMITED EXCEPTIONS TO THE DEADLINE FOR FILING AN ASSESSMENT VALUATION APPEAL AND DEFINING THE CIRCUMSTANCES IN WHICH A REQUEST FOR SUCH AN EXCEPTION WILL BE CONSIDERED AND GRANTED

WHEREAS, Chapter 4.15 of the Dillingham Municipal Code was recently amended to eliminate all late-filed appeals from being considered for any reason;

WHEREAS, the City Council has determined that it is appropriate to allow limited exceptions to the deadline for reasons beyond the control of the taxpayer and which would prevent a reasonable person under the circumstances from filing a timely appeal;

WHEREAS, the City intends to implement this law for the tax year 2014, but does not by adopting this ordinance intend to accept or permit requests for exceptions for previous tax years;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Classification. This is a code ordinance.

Section 2. Amendment of Section 4.15.070. Section 4.15.070 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as ~~strikethrough~~.)

4.15.070 Assessment roll and notice—City to prepare and mail.

A. Annually, the city shall prepare the assessment roll pursuant to AS 29.45.160. The roll shall be prepared in duplicate and shall include particulars on delinquent taxes owing by any persons.

B. The city shall mail each person named in the roll a notice of assessment by March 15th or the next business day should the fifteenth fall on a weekend or holiday, pursuant to the provisions of AS 29.45.170.

C. Corrections to the assessment notice may be made pursuant to AS 29.45.180.

D. The notice shall include the deadline for filing an appeal, which shall be ~~established pursuant to Section 4.15.125(B) and shall be thirty days from the date the notice is mailed.~~

Section 3. Amendment of Section 4.15.110. Section 4.15.110 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as ~~strikethrough~~.)

4.15.110 Posting required.

When valuation notices have been mailed, the city shall cause notice that the assessment rolls have been completed to be posted at two public places for a period of two weeks. Such notice shall also state the time and location of the board of equalization's organizational meeting and that an appeal may be taken to the board of equalization by filing notice in writing with the board specifying the grounds of the appeal within thirty days of the date valuation notices were mailed.

Section 4. Amendment of Section 4.15.125. Section 4.15.125 of the Dillingham Municipal Code is hereby amended to read as follows: (Additions are underlined and **emboldened** and deletions are shown as ~~strikethrough~~.)

4.15.125 Appeals to board of equalization.

A. A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation.

B. No appeal may be taken unless the applicant files with the city clerk written notice of appeal specifying grounds for such appeal within thirty days from the date the assessment notice was mailed.

C. The city clerk shall acknowledge the written appeal by sending the appellant a notice indicating the time and location of the board's organizational meeting, and shall refer all appeals to the assessor, including transmitting to the assessor any documents submitted by the appellant.

D. Prior to the hearing, the appellant taxpayer may present relevant information directly to the assessor, who may revise the original assessment if the information indicates that the original assessment was unequal, excessive, improper or under valued. If the assessor and the appellant taxpayer tentatively agree upon a revised assessment value prior to the hearing, the assessor will prepare a memorandum to the board of equalization stating the reasons for the revised assessment, the amount thereof, and requesting approval of the new value. The board shall consider the memo at the organizational meeting described in subsection E of this section. If the board of equalization does not approve the value, the assessor shall schedule the appeal for a hearing and the city clerk shall properly notify the appellant.

E. As soon as practicable after the deadline for filing appeals expires, the board shall convene an organizational meeting to determine the number of outstanding appeals and schedule hearings. No more appeals shall be accepted except as provided in DMC 4.15.125.G.

F. Hearings for all outstanding appeals shall be held prior to May 15th of the tax year for which the assessment is appealed, unless the board determines at its organizational meeting that additional time is necessary to conduct all the hearings. All hearings and assessments must be complete before the council considers the resolution required by Section 4.15.020(B).

G. A property owner who seeks to appeal the assessor's valuation after the 30-day filing period has closed may request a finding that the property owner was unable to comply with the requirement to timely file an appeal by filing a written request with the City Clerk within fourteen days after the inability to comply ceased or within fourteen days after the taxpayer should have become aware of the reason for filing the appeal, whichever is earlier. The written request must include information sufficient to determine whether the request has been submitted within the time stated in this section.

(Substitute 1 language is indicated in gray-shading.)

1. Each letter shall be considered in a scheduled hearing by not less than three members of the board of equalization, although the entire Board may convene if available and convenient. The City Clerk shall provide notice to the public and the property owner no less than five days prior to the hearing. The panel shall only consider reasons the appellant was unable to comply within the 30-day period and shall not consider evidence regarding property valuation. The panel's determination shall be based on the letter and supporting documents. A taxpayer may not make an oral presentation at this hearing.

2. The panel shall interpret the term "unable to comply" to mean that a property owner has demonstrated compelling reasons or circumstances that were beyond the property owner's control and which would prevent a reasonable person under the circumstances from filing a timely appeal. ~~Absent extraordinary circumstances, a failure to pick up or read mail or to make arrangements for an appropriate and responsible person to pick up or read mail or a failure to timely provide a current address or change in ownership of the property to the city will not constitute an inability to comply.~~

3. If the request is denied, the City Clerk shall notify the property owner of the panel's decision. If the request is granted, the property owner shall have 30 days from the date the City Clerk so notifies the property owner to file an appeal and submit all evidence required by DMC §§ 4.15.130.G and J. A hearing shall be scheduled to occur within 30 days from the deadline identified in the previous sentence, and a decision rendered at the conclusion of the hearing or as soon as practicable thereafter.

4. A request for a finding of inability to comply is limited to an appeal of the notice of assessment for the current assessment year.

Section 5. Effective Date. This ordinance shall be made effective upon passage. No requests for a finding of inability to comply for any tax years prior to 2014 shall be accepted.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on _____.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

(Substitute 1 language is indicated in gray-shading.)

Subject: An ordinance of the Dillingham City Council amending DMC Section 4.15 of the Dillingham Municipal Code to allow limited exceptions to the deadline for filing an assessment valuation appeal and defining the circumstances in which a request for such an exception will be considered and granted

Agenda of: April 3, 2014

Council Action: Council introduced Ordinance 2014-05 (SUB-1) at their March 13, 2014 regular Council meeting.

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade		
X	City Clerk / Janice Williams		

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Public Hearing is scheduled to be advertised in the March 27, 2014 edition of Bristol Bay Times as required to be advertised in a local newspaper five days in advance of the public hearing.

Summary Statement.

Chapter 4.15 of the Dillingham Municipal Code was recently amended to eliminate all late-filed appeals from being considered for any reason.

Previous to that change the process for requesting a late filed appeal was a three step process:

- Step 1) Council set a date for a BOE hearing;
- Step 2) BOE convened to determine whether or not to accept the late filed appeal based on unable to comply because of a compelling reason or circumstances that would prevent a reasonable person under the circumstances from filing a late filed appeal, and, if accepted;
- Step 3) BOE scheduled a hearing within 30 days to hear the late filed appeal.

Since then the new ordinance was put to the test when a request for a late filed appeal was presented to the Council after being denied by the City Manager. The City's Attorney reinforced that the Council did not have the authority to waive the current ordinance that prohibited late filed appeals, but could consider amending the ordinance to accept a late filed appeal in the future based on extenuating circumstances.



NOTICE OF A PUBLIC HEARING

Public Hearing on Ordinance Nos. 2014-04 and 2014-05 (SUB-1)

The City Of Dillingham will hold a **Public Hearing** on Thursday, April 3, 2014, at 7:00 P.M. in the City Council Chambers for the purpose of taking comment from the public on the following ordinances:

- Adopt Ordinance No. 2014-04, An Ordinance of the Dillingham City Council Amending the Dillingham Municipal Code to Consistently Apply the Title of Six Year Capital Improvement Plan
- Adopt Ordinance No. 2014-05 (SUB-1), An Ordinance of the Dillingham City Council Amending Chapter 4.15 of the Dillingham Municipal Code to Allow Limited Exceptions to the Deadline for Filing an Assessment Valuation Appeal and Defining the Circumstances in Which a Request for Such an Exception Will be Considered and Granted

If you have any questions, please contact the City Clerk's office at 842-5212 or email cityclerk@dillinghamak.us.

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2014-06

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 18 OF THE DILLINGHAM MUNICIPAL CODE TO REPEAL AND REENACT CHAPTER 18.16 LAND USE PERMITS TO PROVIDE A SYSTEM OF PERMITS AND REVIEWS TO RESPOND TO A VARIETY OF LAND USE ACTIVITIES; TO PROVIDE ADDITIONAL DEFINITIONS RELATED TO LAND USES IN SECTION 18.12.020; TO PROVIDE ADDITIONAL GUIDANCE FOR NONCONFORMING USES IN CHAPTER 18.44; TO PROVIDE ADDITIONAL GROUNDS FOR THE CITY TO ENFORCE ITS REGULATIONS IN CHAPTER 18.60; AND TO CREATE CHAPTER 18.42, MATERIAL SITES AND REGULATION

WHEREAS, the community of Dillingham supports development; and

WHEREAS, construction of a development project may require the extraction of gravel and aggregate; and

WHEREAS, the City of Dillingham also wishes to protect its environment and citizens from unnecessary negative impacts of such projects; and

WHEREAS, the development of material sites can impact viewsheds and raise issues of noise, dust, potential harm to local wells and anadromous streams; and

WHEREAS, state and federal regulations require certain permits in connection with development and operation of material sites, but these permits do not cover all the issues that the community may wish to see addressed; and

WHEREAS, the City is considered the entity responsible for addressing issues that are not currently covered by existing regulations; and

WHEREAS, the City wishes to provide responsible oversight of its natural and built environments, by creating a system of permits and reviews to respond to the scope and variety of land use activities; and

WHEREAS, the City recommends adoption of necessary changes to the Dillingham Municipal Code to address the development of material sites in Dillingham;

NOW, THEREFORE, BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Amendment of Title 18. Title 18 of the Dillingham Municipal Code is hereby amended by repealing (repealed language shown as ~~strikethrough~~) and reenacting Chapter 18.16 to read as follows:

Chapter 18.16
LAND USE PERMITS

Sections:

- ~~18.16.010 Land use permit required.~~
- ~~18.16.020 Land use permit application.~~
- ~~18.16.030 Land use permit administration.~~

~~18.16.010 Land use permit required.~~

~~No party shall construct, construct an addition to, substantially improve, change the principal use of, or relocate a structure, or construct a driveway or fence within the city without first securing from the city planning department a land use permit for each parcel. (Ord. 92-21 § 4 (part), 1992.)~~

~~18.16.020 Land use permit application.~~

~~Application for a land use permit shall be filed with the planning department on forms supplied by the department. Each application shall be accompanied by the required fee. (Ord. 92-21 § 4 (part), 1992.)~~

~~18.16.030 Land use permit administration.~~

~~A. Administrator. The planning director is appointed to administer and implement this title by granting or denying land use permit applications in accordance with its provisions.~~

~~B. Alternate to Director. In the event that the planning director is out of town, the position is vacant, or the director is otherwise unavailable for more than one week, the city manager has the option of designating an interim administrator of this title. The interim administrator may include the city manager, another city employee or the planning commission.~~

~~C. Review. Following filing of the application, the planning director shall review the submittal, request any additional information deemed necessary, and determine whether the application complies with the requirements of this code.~~

~~D. Approval. If it is determined that the application complies with the requirements of this code, the planning director shall issue a permit granting administrative approval to proceed, subject to provisions of this code.~~

~~E. Revision of Permit. An applicant may seek approval from the planning director to revise an approved permit, without having to submit a new application, if:~~

- ~~1. The revision meets the definition of "minor amendment" in this title; or~~
- ~~2. The revision is for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title.~~

~~F. Expiration of Approval. An applicant has two years from the approval date to make substantial progress on the structures and uses that have been approved. If substantial progress has not been made within two years, the approval expires. If the applicant desires the structures and uses to be reapproved, a new permit application must be submitted. (Ord. 92-21 § 4 (part), 1992.)~~

Sections:

- 18.16.010 General Provisions**
- 18.16.020 By-Right Land Use Activity.**
- 18.16.030 General Land Use Permit.**
- 18.16.040 Administrative Review.**
- 18.16.050 Conditional Use Permit.**

18.16.010 General Provisions

A. Purpose. Unless a land use activity is a by-right land use activity, as described in Chapter 18.16.020, no party shall construct, construct an addition to, substantially improve, change the principal use of, or relocate a structure, or construct a driveway or fence within the city without first securing from the city planning department a land use permit for each parcel on which the structure, driveway or fence is or will be located.

B. Administrator. The Planning Director shall administer and implement this title.

C. Alternate to Director. In the event that the Planning Director is out of town, the position is vacant, or the Director is otherwise unavailable for more than one week, the City Manager has the option of designating an interim administrator of this title. The interim administrator may include the City Manager, another city employee or the Planning Commission.

D. Expiration of Approval. An applicant has two years from the approval date to make substantial progress on the structures and uses that have been approved. If substantial progress has not been made within two years, the approval expires. If the applicant desires the structures and uses to be reapproved, a new permit application must be submitted.

18.16.020 By-Right Land Use Activity.

A. Purpose. Those land uses with the least significant impact on the natural or built environments shall be considered by-right activities. By-right land uses are deemed appropriate due to their minimal size and low impact on surrounding neighborhoods and/or properties. Acknowledging certain uses as by-right serves to expedite the process of constructing or establishing such use.

B. Authority. By-right land uses require no application or formal review from City of Dillingham staff, or by an elected or appointed body. It is the responsibility of the property owner to ensure compliance with the requirements of the underlying land use district.

C. Authorized By-Right Land Uses. By-right uses are those structures or uses that are non-habitable and clearly ancillary or secondary to the parcel's principal use, such as a small smoke house or "steam". A by-right building shall not exceed one hundred and fifty (150) square feet in size.

D. Process. If a person wishes to construct or establish a by-right land use, they may do so without supplying any material to the City of Dillingham. No formal review procedure is necessary.

18.16.030 General Land Use Permit.

A. Purpose. General Land Use Permits are required for all land uses not considered by-right land uses. The purpose of the permit is to ensure that the standards of the underlying land use district are satisfied. These standards may include, but are not limited to: setbacks, maximum building height, building size, density, open space, on-site and septic well systems and the intended use.

B. Authority. The Planning Director shall review all General Land Use Permits.

C. Authorized Uses for General Land Use Permit. All land uses, other than those allowed as by-right land uses, or those required to follow the Administrative Review or Conditional Use process, shall require a General Land Use Permit.

D. Standards Applicable to General Land Use Permits. Only those standards stated in Chapter 18.20, Land Use Districts, shall be applicable to a General Land Use Permit; however, the Planning Director may impose conditions to a General Land Use Permit if regulations pertaining to the specific use, building or structure in this Code grant such authority.

E. Process. A General Land Use Permit shall be processed as follows:

1. A voluntary pre-application conference may be held with the Planning Director;
2. The Planning Department shall make available the General Land Use Permit form that outlines the necessary material and specific format for the permit application;
3. Upon receiving a complete General Land Use Permit form, the Planning Director shall conduct a review to determine whether the proposed land use complies with the applicable land use district standards; and
4. The Planning Director shall approve or deny the application no more than thirty (30) days after it has been submitted.

F. Revision of Permit. An applicant may seek approval from the Planning Director to revise an approved permit without having to submit a new application if:

1. The revision does not change the use, add an additional use or expand the combined area of the approved buildings or uses by more than twenty-five (25) percent; or
2. The revision is for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title.

18.16.040 Administrative Review.

A. Purpose. An Administrative Review is for those land uses which are generally compatible with the other permitted uses in a land use district, but which require individual review of their location, design, operation characteristics, intensity and density to ensure the appropriateness of the land use in the land use district.

B. Authority. The Planning Director, in accordance with the procedures, standards and limitations of this Title, shall approve, approve with conditions or deny a land use application requiring an Administrative Review.

C. Uses Requiring Administrative Review. Chapter 18.20, Land Use Districts, shall define those uses which require an Administrative Review. A land use subject to an Administrative Review shall be evaluated by the Planning Director for compliance with the standards and conditions set forth in this Chapter.

D. Standards Applicable to Administrative Review. When considering a development application for Administrative Review, the Planning Director shall consider whether all of the following standards are met, as applicable:

1. The use is consistent with the intent of the land use district in which it is proposed to be located and complies with all other applicable requirements of this Title;

2. The use is compatible with the mix of development in the immediate vicinity of the parcel in terms of scale of development, safety, and type of use, as well as with any applicable comprehensive, neighborhood, or master plan;

3. The location, size, design and operating characteristics of the proposed use minimizes adverse off-site effect by meeting the standards specified in this Code, including drainage or other water quality impacts, visual impacts, impacts on pedestrian and vehicular circulation, parking, trash, service delivery, noise, vibrations and odor on surrounding properties;

4. There are adequate public facilities and services to serve the use including but not limited to roads, water, sewage, solid waste, parks, police, fire protection, emergency medical services, hospital and medical services, drainage systems and schools; and

5. The Planning Director may impose such conditions on an administratively-reviewed use that are necessary to maintain the integrity of the City's land use districts and to ensure the use complies with this Chapter and this Title; is compatible with surrounding land uses; and is served by adequate public facilities. This includes, but is not limited to, imposing conditions on size, bulk, location, open space, landscaping, buffering, lighting, stormwater management, signage, off-street parking and other similar features, the construction of public facilities to serve the use and limitations on the operating characteristics, hours of operation and duration of the use.

E. Process. An application for Administrative Review shall be processed in accordance with the following:

1. A voluntary pre-application conference may be held with the Planning Director;

2. Upon receiving a complete Administrative Review application, the Planning Director shall conduct a review and prepare a determination; and

3. The Planning Director shall approve, approve with conditions, or deny the application no more than forty-five (45) days after receiving a complete application.

F. Application. At a minimum, all Administrative Review applications shall include the following information and materials:

1. A completed City of Dillingham General Land Use Permit form;

2. A disclosure of ownership of the parcel proposed for development, listing the names of all owners of the property and all mortgages, judgments, liens, easements, contracts and agreements affecting the parcel and demonstrating the owner's right to apply for the development application. If there is a question determined by the City regarding ownership of the property, which could be resolved by a title insurance company, the City may request the applicant provide a certificate of plat or current title insurance policy indicating the legal and equitable owners. The certificate shall be current within thirty days of the application. Also;

3. An 8½" x 11" vicinity map locating the subject parcel within the City of Dillingham;

4. A site plan depicting the proposed layout and the project's physical relationship to the land and its surroundings;

5. A site improvement survey certified by a registered land surveyor, licensed in the state, showing the current status of the parcel including any easements or rights-of-way. This requirement or any part thereof may be waived by the Planning Director if the project is determined not to warrant a survey document;
6. A written description of the proposal and a written explanation of how the proposed development complies with the review standards relevant to the development application;
7. A sketch plan of the site showing existing and proposed features relevant to the review of the application, including:
 - a. Location, dimension, and use of all structures;
 - b. Location and dimensions of all existing and proposed roads, driveways, parking areas, patios, decks, walkways, and other impervious area(s); and
 - c. Distances of existing and proposed structures from all property lines, rights-of-way, and easements;
8. A written description of the operational characteristics of the proposed use;
9. Any additional materials required for the specified land use type.

G. Amendment to Approved Administrative Review.

1. Minor amendment. A minor amendment to an approved administratively-reviewed use may be authorized by the Planning Director. Revisions for the purpose of mitigating impact to historic resources according to Chapter 18.32 of this title may be reviewed as a minor amendment. Other minor amendments shall be limited to changes which meet all of the following standards:
 - a. The change will not cause negative impacts on pedestrian and vehicular traffic circulation, parking or noise;
 - b. The change will not affect the character of the neighborhood in which the use is located;
 - c. The change will not substantially alter the external visual appearance of the building or its site.
2. Major amendments. Any amendment that changes an approved use to the extent that it no longer meets the criteria for Administrative Review shall be reviewed by the Planning Commission as a proposed Conditional Use.

18.16.050 Conditional Use.

A. Purpose. Conditional uses are those land uses whose impact to the general community requires careful review. These impacts may include location, design, operation characteristics, intensity and density that potentially exceeds the normal expectations of the underlying land use district. As such, conditional uses warrant a review before a public forum.

B. Authority. Conditional use applications are reviewed by the Planning Commission during a public hearing. The Planning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions, or deny a land use application for a conditional use, after receiving recommendation from the Planning Director.

C. Authorized Conditional Uses. Only those uses which are authorized as a conditional use for each land use district in Chapter 18.20, Land Use Districts, may be considered for conditional use review. The designation of a land use as a conditional use in a land use district does not constitute an authorization of such land use or act as an assurance that such land use will be approved as a conditional use; rather, each proposed conditional use shall be evaluated by the Planning Commission for compliance with the standards and conditions set forth in this Chapter.

D. Standards Applicable to Conditional Uses. When considering a development application for a conditional use, the Planning Commission shall consider standards (1) through (5) found in Section 18.16.040.D., Standards Applicable to Administrative Review, as applicable.

E. Process. An application for review of a conditional use shall be processed in the following manner:

1. A voluntary pre-application conference may be held with the Planning Director;
2. Upon receiving a complete conditional use application, the Planning Director shall conduct a review and prepare a recommendation for the Planning Commission;
3. A public hearing before the Planning Commission shall be conducted no later than sixty (60) days after receiving a complete application;
4. Following the public hearing, the Planning Commission shall by resolution (with appropriate findings of fact) approve, approve with conditions, or deny the application.
5. Notice requirements for conditional use applications shall include the following:
 - a. The applicant shall post a public notice sign on the subject property describing the owner, applicant, request, and date of the public hearing. The sign shall be at least twenty-four (24) inches in width by thirty-six (36) inches in height, with lettering at least one (1) inch in height. The sign shall be visible from the highest traveled public right-of-way adjacent to the property. Notice signs can be obtained from the City
 - b. At least thirty (30) days prior to the date of the scheduled public hearing, the City shall mail a public notice announcing the owner, applicant, request, location of the proposed use and date of the public hearing to all property owners within five hundred (500) feet of the subject property boundary; and
 - c. At least thirty (30) days prior to the date of the scheduled public hearing. The City shall publish notice of the time and place of the hearing in the manner required by DMC 2.08.020;

F. Application. An application for conditional use shall include the same material required for Administrative Review, found in Section 18.16.040.

G. Amendment to Approved Conditional Use. This process is the same as specified under the Administrative Review process, found in Section 18.16.040.G.

18.16.060 Example and Summary of Administrative Requirements

The following table summarizes and provides examples of the requirements of this Chapter. In case of any conflict between the table and requirements set forth in Sections 18.16.010-050, Sections 18.16.10-18.16.050 shall control.:

	BY-RIGHT LAND USE	GENERAL LAND USE PERMIT	ADMINISTRATIVE REVIEW	CONDITIONAL USE
Permit Required	No	Yes	Yes	Yes
Review Timeframe	Immediate	Up to 30 days	Up to 45 days	Up to 45 days
Review Authority	None required	Planning Director	Planning Director	Planning Commission
Appeal Authority	Not applicable	Board of Adjustment	Board of Adjustment	Board of Adjustment
Review Authority May Apply Conditions?	No	No	Yes	Yes
Examples of uses	<ul style="list-style-type: none"> • Smoke houses • Satellite dish • Steam • Deck • Minor home remodel 	<ul style="list-style-type: none"> • Single-family home • Add-on • Garage • Office building • Driveway • On-site well or septic 	<ul style="list-style-type: none"> • Material sites • Option for other uses in the future 	<ul style="list-style-type: none"> • Larger scale material sites • Option for other uses in the future

Section 2. Addition to 18.12.020 The Dillingham Municipal Code is hereby amended by the addition of the following definitions to Section 18.12.020, Definitions:

“Accessory structure” means a detached structure or building which is subordinate and incidental to that of the main building, structure, or use on the same lot.

“Berm” means a small hill or raised section of earth, at least six (6) feet in height, with the purpose of providing visual or noise screening and/or protection to adjacent property, rights-of-way or access easements.

“Buffer zone” means a variably-sized area maintained around the perimeter of an excavation site or property boundary. A buffer zone provides a neutral area that lessens the impacts of potential mining impacts including noise, water runoff and dust.

“Dewatering” means the process of removing or draining groundwater or surface water from a riverbed, water body or extraction site by pumping or evaporation.

“Exploration” means any excavation to determine the location of below ground natural resources, subsurface or slope integrity, and/or the depth of the water table.

“Extraction site” means those areas on a material site where resources are being extracted, or have been extracted, from subterranean soils.

“High water table” means the surface level of the water-saturated part of the ground, and frequently the uppermost portion of an aquifer at a given vertical reference, during the seasonal high water period.

“Material site” means the area, delineated by a parcel boundary, where a material extraction operation is occurring involving the extraction of the following materials: sand, gravel, rock, peat moss, clay, soil, sphagnum, pumice, cinders, clay or other minerals which are extracted by screening, washing, crushing, grinding, milling or other similar processes. Material sites also include those areas where material extraction has stopped or completed but remains in an un-reclaimed state.

“Operator” means the individual or company responsible for extraction operations on a material site.

“Revegetation” means the reseeded of soils to encourage plant growth and soil integrity that is equivalent to levels prior to site disturbance and/or vegetation removal.

“Water body” means any significant accumulation of water, including lakes, ponds, wetlands, creeks, rivers, streams, and canals.

Section 3. Addition of Section 18.44.025 The Dillingham Municipal Code is hereby amended by adoption of Section 18.44.025, Nonconforming Uses – Material Sites, to read as follows:

18.44.025 Nonconforming Uses - Material Sites.

A. All operating material sites with operation and reclamation permits approved by the State of Alaska and with approved General Land Use Permits issued by the City of Dillingham at the time of adoption of Ordinance No. 2014-06 on May 1, 2014 shall be deemed legal nonconforming uses. This nonconforming status enables operators to continue the extraction of material without the requirement of acquiring a material site permit as specified in this section. Compliance with provisions found in Sections 18.44.020 and 14.44.030, and the following standards are required:

1. All active material sites, or those that have filed for a state permit by the date of adoption of Ordinance No. 2014-06, shall register their operation with the City of Dillingham. This registration shall provide a record for the operation’s scope, including the type of mining operation to occur, and a copy of any approved State permits;
2. All operations must comply with Section 18.42.080, Reclamation Plan;
3. Operations that expand the magnitude and/or the potential impacts of the operation, as specified below, are required to submit and receive approval for continued operation under the administrative or conditional use permit specified in this section. The permit process shall occur and conclude prior to the operation completing the expansion:
 - a. Any nonconforming material site whose growth or expansion causes the operation to cross one permit level to another, as defined in Section 18.42.030, Types of Material Site Permits and Review Authority;

b. All operations extracting material within the high water table, shall comply with Section 18.42.090, Water Table Monitoring Plan;

c. Expansion by more than five (5) acres of the cumulative area affected by the operation, or expansion by more than ten (10) percent in the annual volume of material extracted, as compared to the area of operation and volume of material extracted during the summer season in the year prior to the adoption of this code.

4. After ten (10) years of operation from the date of approval of this ordinance, the operation shall be required to conform to all requirements of this code.

B. It is the operator's responsibility to report any changes at a material site that would require compliance with the standards in Section 18.44.025.A. Failure to report such changes may result in fines and/or the revocation of the nonconforming status.

Section 4. Addition to Section 18.60.010 The Dillingham Municipal Code is hereby amended by additional language to Section of Chapter 18.60.010, Violations-Enforcement. The amended section shall read as follows:

A. The planning director or designee may order the discontinuance of unlawful uses of land, buildings or structures; the removal or abatement of unlawful buildings or structures or any unlawful additions or alterations thereto; the discontinuation of construction or preparatory activity leading to an unlawful structure or use of land; or any other action necessary to ensure compliance with this title;

B. The planning director or designee may order the discontinuance of uses of land, buildings or structures that create a significant risk to sensitive environmental qualities of the site, including slopes, water bodies, and other identified important environmental areas;

C. The planning director or designee may order the discontinuance of uses of land, buildings or structures that create a significant risk to the general public's safety, health, and welfare; and

D. City police officers are also authorized to issue citations to any person who violates any provision of this title based on information supplied by the planning director or department of public works

Section 5. Addition of Chapter 18.42 The Dillingham Municipal Code is hereby amended by adoption of Chapter 18.42, Material Sites and Regulations, to read as follows:

CHAPTER 18.42 MATERIAL SITES AND REGULATIONS

Sections:

18.42.010	Purpose and Intent
18.42.020	Applicability – Scope
18.42.030	Types of Material Site Permits and Review Authority
18.42.040	Appeals
18.42.050	Application Review Fees
18.42.060	Submittal Process
18.42.070	Mining Plan
18.42.080	Reclamation Plan

- 18.42.090 Water Table Monitoring Plan
- 18.42.100 Performance Standards
- 18.42.110 Compliance with Federal & State Policies
- 18.42.120 Inspections
- 18.42.130 Penalties and Fines
- 18.42.140 Renewals

18.42.010 Purpose and Intent.

This Title provides material site land use regulations to allow extraction of material resources in a manner that is compatible with the maintenance of community health, safety and welfare and natural resource integrity. These purposes are accomplished by:

1. Promoting the goals and objectives of the City of Dillingham Comprehensive Plan;
2. Promoting the orderly and beneficial development of such areas by the owner/permittee in a manner that will not devalue the extraction site or neighboring properties for future beneficial uses upon completion of resource extraction;
3. Promoting diversified land use and economic opportunity;
4. Encouraging the most appropriate uses of land; and
5. Protecting and enhancing quality of life, health, and safety within the City of Dillingham.

18.42.020 Applicability – Scope.

A. This Chapter applies to all private and public lands in the City of Dillingham.

B. This Chapter shall not apply when material extraction is not intended for sale or barter, or where the area where gravel is to be extracted is less than one acre, or where the annual extraction of materials is five hundred (500) cubic yards or less.

C. Extraction that exceeds the standards stated in Section 18.42.030.B requires an Administrative Review Permit or Conditional Use Permit. See Section 18.42.030, Types of Material Site Permits and Review Authority, for requirements determining which permit is required.

D. Material extraction falling below the thresholds in Section 18.42.030.B shall comply with requirements found in Section 18.16.030, General Land Use Permit, and the additional standards below:

1. Hours of operation – operation is not permitted between the hours of 11 p.m. to 7 a.m.
2. Buffers required – policies established in Section 18.42.100.B.2, Buffers, shall apply to all material sites regardless of their location and volumetric extraction amount, with the exception that on parcels of three acres or less, the acceptable buffer width may be reduced to twenty-five (25) feet.

E. Exploration work conducted prior to material extraction must comply with setbacks and other dimensional standards of the underlying land use district, and shall result in minimal disturbances to vegetation, water ways and neighboring uses.

18.42.030 Types of Material Site Permits and Review Authority.

A. The types of permits available for material sites are:

1. Administrative Review Permit (ARP) – a permit approved, approved with conditions, or denied by the Planning Director in accordance with procedures outlined in Section 18.16.040, Administrative Review.

a. To qualify for an ARP, the following criteria must be met:

- i. The cumulative continuous area of activity is less than five (5) acres in size;
- ii. Extraction activities allowed by this permit shall not exceed five (5) years. A one-time extension may be granted, for a period no longer than twelve (12) months, after which a renewal permit must be obtained;
- iii. The material site property lines are within five hundred (500) feet of parcel boundaries of four (4) or fewer residential parcels,

2. Conditional Use Permit (CUP) – a permit approved, approved with conditions, or denied by the Planning Commission. The CUP process shall proceed in accordance with procedures outlined in Section 18.16.050, Conditional Use Permit.

a. The following criteria qualify an application for a material site CUP:

- i. A cumulative continuous area of activity is equal to or greater than five (5) acres in size;
- ii. Any material site operation with extraction occurring below the average annual high water table;
- iii. Extraction activities allowed by this permit shall not exceed five (5) years. A one-time extension may be granted, , for a period no longer than twelve (12) months, after which a renewal permit must be obtained;
- iv. A material site with five (5) or more residential parcels located within five hundred (500) feet if its parcel boundaries; or
- v. A material site that includes or immediately adjoins anadromous streams.

B. Conditions. During an ARP or CUP process, the review authority may set conditions of approval, upon the area in which the material site is located, including, but not limited to the following:

1. Setbacks may be increased as appropriate for increased compatibility with surrounding property;
2. Visual screening, buffering, noise mitigation, lighting restriction and ingress/egress restrictions as appropriate for increased compatibility with surrounding property, and in accordance with the goals in Section 18.42.100, Performance Standards;
3. Road maintenance, including dust mitigation, may be required of the material site operator; and
4. The location of batch plants.

18.42.040 Appeals.

Any appeal of a material site permit determination shall be subject to the policies and procedures outlined in Chapter 18.52, Appeals, of this Code.

18.42.050 Application Review Fees.

The applicant of a material site permit shall be responsible for all associated review fees, based upon the following schedule:

- A. Administrative Permit: \$100
- B. Conditional Use Permit: \$200

18.42.060 Submittal Process.

A. Prior to submitting an application for a material site permit, applicants may request a pre-application conference with the Dillingham Planning Department. For both the ARP and CUP required under this Chapter, the following shall be submitted to the department:

1. A completed General Land Use Permit application form provided by the department;
2. A mining plan in accordance with Section 18.42.070;
3. A reclamation plan acknowledging future compliance with standards as outlined in Section 18.42.080, Reclamation Plan; and
4. A fee in the amount designated in Section 18.42.050.

B. The Planning Director may reject any application which is incomplete or fails to meet the requirements of this Chapter. The rejection shall be in writing and shall state the deficient items. Once the deficiencies have been corrected, the complete application will be processed within the times specified below.

C. If the minimum criteria for an ARP can be met, the Planning Director shall render a decision within sixty (60) days of acceptance of the application.

D. If the proposed development exceeds the minimum criteria for an ARP, surrounding property owners will be notified and a public hearing before the Planning Commission for a CUP shall be conducted within sixty (60) calendar days of the acceptance of a complete application. The applicant may waive the sixty (60) day limit.

E. The Planning Commission shall hear any interested parties and shall render a decision on the application for a CUP within sixty (60) calendar days from the date of public hearing, unless the applicant agrees to a time extension. In the granting of a CUP, the Planning Commission shall state in writing the conditions any approval of the permit.

18.42.070 Mining Plan.

A. All applicants seeking a material site permit must submit a mining plan. The mining plan shall describe the existing conditions of the site, and the operator's plan for material extraction and site management. At a minimum, the mining plan shall include the following:

1. The information required as part of a General Land Use Permit;
2. Photos of the existing property displaying existing vegetation;
3. An Existing Conditions Map showing:

- a. Parcel boundaries with dimensions;
 - b. Location, dimensions, and purpose of rights-of-way and easements within the property;
 - c. General location and dimensions, and use of all existing structures;
 - d. Location and dimensions of all existing roads, driveways, parking areas, patios, decks, walkways, and other impervious area(s);
 - e. Location of all utilities, including but not limited to septic tanks and drainfields, water, power, and telecommunications;
 - f. Location of any streams, lakes or other surface water bodies, as defined; identify which, if any, of the streams are anadromous water bodies;
 - g. Other significant distinguishing land features such as slopes greater than twenty (20) percent within or adjacent to the parcel;
 - h. Vicinity map showing the land uses on adjacent parcels.
4. An Operations and Extraction Plan showing:
 - a. Location and boundaries of extraction site(s);
 - b. Location of proposed utilities;
 - c. Location, dimension, and use of all proposed structures;
 - d. Storm water management;
 - e. Distance of proposed structures from all property lines, from rights-of-way, easements, and other structures;
 - f. Mining activity phasing plan, showing the sequence of extraction and the relationship to required reclamation; and
 - g. Site ingress/egress, including haul roads within the site, and planned path of trucks delivering materials to off site locations.
 5. A Performance Standards Compliance Map depicting compliance with those standards in Section 18.42.100, Performance Standards;
 6. A Reclamation Plan addressing issues outlined in section 18.42.080;
 7. All maps required above shall be submitted with a north arrow, maintain a consistent orientation, and use a similar scale with one (1) inch equaling an even number of feet not more than two hundred (200) feet. If a one (1) inch = two hundred (200) feet scale cannot represent the entire property, multiple maps must be provided;

8. When practical and beneficial to the simplicity and efficiency of the application, the requirements outlined in Section 18.42.070.A above may be combined onto a single plan and/or map.

18.42.080 Reclamation Plan.

A. For all extraction operations permitted under this Title, or for those material sites with a legal nonconforming status, reclamation of each phase of operation shall start as soon as that phase of extraction is over. The reclamation process will be completed in accordance with this section within four (4) years of an extraction phase becoming complete.

B. Reclamation is not required for those portions of mining phases that overlie subsequent phases.

C. The following actions must be conducted to satisfy the requirements of the reclamation plan:

1. Junk vehicles, junk vehicle parts, and trash shall be removed;
2. Slopes shall be graded to attain a maximum fifty (50) percent slope or the natural stabilized angle of repose of the existing earth material:
 - a. Site soils more susceptible to erosion or liquefaction require a slope adequate to ensure stabilization;
 - b. Slopes shall be graded to blend with the surrounding undisturbed topography.

D. Surface water quality shall be protected by implementing applicable best management practices described in the current publication of the State of Alaska Department of Environment Conservation's User Manual Best Management Practices for Gravel Pits.

E. All disturbed areas shall be covered with a minimum compaction depth of four (4) inches of organic material or soil stripped and stockpiled during initial development activities.

F. Surface areas shall be revegetated to protect against erosion.

1. A vegetative cover shall be established and maintained over all disturbed areas on the material extraction site in conformance with the current Alaska State Department of Natural Resources, Division of Agriculture, Revegetation Manual for Alaska. A copy of this manual may be reviewed at the Planning Department;
2. Reseeding of reclaimed areas shall utilize certified seed suitable for Alaska conditions that is free of noxious weeds or undesirable plant species identified in 11 AAC.34.020, Prohibited and Restricted Noxious Weeds.
3. Seventy-five (75) percent live plant cover of the entire restored area shall be achieved within four (4) years of the phase being completed.

G. Areas covered by buildings, paved driveways, paved roads, and paved parking lots and areas where future utility easements and septic systems will exist are exempt from the reclamation standards outlined in subsections (E) through (F) of this section.

H. Standards for reclamation below the high water table upon completion of materials extraction are as follows:

1. The first twenty (20) feet of slope below the water table shall not exceed ten (10) percent to create a benthic zone; and
2. The remaining slope within the water table shall not exceed the stabilized angle of repose.

I. The owner/operator of the material extraction site shall record a restoration agreement with the State Recorder that runs with the land, to assure the City that the sale of the property to any other owner/operator for any reason will cause the new owner/operator to comply with the terms of the restoration agreement within the time constraints on the agreement.

18.42.090 Water Table Monitoring Plan.

A. Extraction of material below the high water table requires a permit under this Title except:

1. Material extraction in navigable water performed under the authority of the state or federal governments.

B. Compliance with these standards shall be paid for by the applicant, and required monitoring and testing procedures shall be coordinated with the City of Dillingham staff, to ensure these actions comply with required standards.

C. Prior to application for a material site permit with extraction occurring in the high water table, the following requirements shall be met:

1. Installation of a minimum of three water monitoring tubes or well casing as recommended by a qualified professional to adequately determine groundwater flow direction, hydraulic gradient, water table and seasonal high water table elevation, and monitor groundwater quality upgradient and downgradient of the proposed activity on the property;
2. Collection of a sufficient number of representative groundwater samples, as recommended by a qualified professional, to determine baseline water quality;
 - a. Baseline representative groundwater samples, shall be collected biannually (either mid-summer and fall or fall and late winter) from monitoring wells, and be analyzed for any chemicals that present a risk to groundwater quality by appropriate methods approved by the state;
 - b. Representative groundwater samples shall be collected under supervision of a qualified professional using sampling methods and analytical methods as defined by a state-certified laboratory. Sampling methods shall include documentation to assure acquisition of representative samples.
3. Determination of seasonal high water table elevation, groundwater flow direction, hydraulic gradient, and water table elevation for the site shall be measured under supervision of a qualified professional.
4. A written report shall be completed by a qualified professional that makes a determination about the potential adverse effects to groundwater and surface water quality

for surrounding water users and adjacent properties. The report shall be submitted with the CUP application and shall:

- a. Identify existing public water system sources (i.e., wells, springs, surface water intakes), as identified by the city or state, that are located within one thousand (1,000) feet of the boundary of the property on which the activity will take place;
- b. Identify actual or presumed private drinking water wells located within one thousand (1,000) feet of the boundary of the property on which the activity will take place and include a copy of the available well logs. The qualified professional shall inspect ADNR well log records if available for wells;
- c. Contain maps at appropriate scales presenting the results of the well search, and setbacks and/or buffers required by Section 18.42.090.E.7 of this section;
- d. Include the water table elevation monitoring data, groundwater sampling analytical results, monitoring well logs and records of any test pits, and a discussion of the high water table determination;
- e. Evaluate subsurface hydrologic conditions and identify potential adverse effects that may occur as a result of material extraction. The evaluation of the hydrologic conditions shall include identifying confining layers; and
- f. The report and all data relied upon in creation of the report shall be provided to the city and shall be available to the public for inspection and review by members of the public.

D. In addition to the application requirements for a material site CUP, the requirements for water table extraction shall include:

1. A description of the proposed extent and depth of material extraction beneath the high water table;
2. A monitoring plan, and a spill prevention, control, and countermeasures plan;
3. A certificate of general liability insurance with limits not less than \$1,000,000 per occurrence/\$1,000,000 aggregate for operations involving less than forty (40) acres and \$2,000,000 per occurrence/\$2,000,000 aggregate for operations involving forty (40) acres or larger. Insurance shall insure liability for bodily injury and property damage and be written on the Insurance Services Office form number CG0001 12 07 or a form as broad as CG0001 12 07. The certificate of insurance shall include thirty (30) days' notice of cancellation to the City. The City shall be named on the applicant's general liability policy as an additional insured and the applicant shall waive their rights of subrogation against the City. Such insurance shall remain in full force and effect in the specified amounts for the duration of the permit period. Insurance coverage must include liability for providing comparable alternate sources of drinking water to all impacted parties served by any private or public water system adversely affected as a result of the activity;
4. A certificate of pollution liability insurance with limits of \$1,000,000 per occurrence/\$1,000,000 aggregate including third party bodily injury and property damage and cleanup costs. If the responsible party's pollution liability (environmental) insurance is written on a claims-made form, the responsible party shall provide insurance for a period

of three years after expiration or termination of the permit. The policy(ies) shall evidence a retroactive date, no later than the effective date of the CUP.

E. If approved, the operating standards for extraction within the high water table are as follows:

1. Groundwater flow direction, hydraulic gradient, and groundwater table elevation for the subject parcel shall be measured at least monthly during extraction. Monitoring wells must be maintained or replaced as needed with equivalent monitoring wells;

2. Implement the spill prevention, control and countermeasures plan in accordance with the United States of America Environmental Protection Agency's requirements and those provided by the State of Alaska Department of Environmental Conservation for above ground storage tank operations regardless of the quantity of petroleum products on site;

a. In the event of a reportable release of regulated contaminants, notification shall include the Planning Director and shall occur concurrently with notice to state and federal agencies, if applicable.

3. Collect groundwater samples semiannually prior to seasonal excavation startup and within two weeks of seasonal shutdown from the down-gradient and cross-gradient monitoring wells. Sample collection shall be conducted in accordance with sampling methods defined by a state certified laboratory;

a. Representative groundwater samples shall be analyzed, at a minimum, for benzene, toluene, ethylbenzene, xylenes, and total dissolved solids, by methods approved by a certified laboratory as well as any analyte identified in the water quality monitoring data with a concentration within fifteen (15) percent of the applicable water quality standards established by state regulation. Groundwater sample analysis shall include testing for analytes that may indicate water quality changes including, but not limited to, pH, conductivity, nitrates, sulfates, sodium, calcium, magnesium, bicarbonate, and potassium;

b. Analytical sampling results and water elevation monitoring data shall be retained for two (2) years following completion of reclamation activities and shall be provided to the Planning Director upon request;

i. If the monitoring data indicates that a maximum contaminant level set under 18 AAC 80 has been exceeded, or if the water level measurements indicate a shift, beyond natural variability, in the elevation of the water table, the owner or responsible party shall report that result to the Planning Department within 48 hours of notification.

4. A qualified professional shall annually submit a report to the department that includes a table of monitoring results:

a. Water quality sample analytical results in a table that includes the appropriate maximum contaminant levels established under 18 AAC 80; and

b. Water table elevation monitoring data.

5. Operations shall not breach or extract material from a confined aquifer or a confining layer beneath a perched aquifer currently used as a drinking water source;
 - a. If evidence suggests a confined aquifer or confining layer has been breached, or if groundwater or surface water elevation changes rapidly or beyond natural variation, the Planning Director shall be notified within twenty-four (24) hours.
6. Proof of insurance as required by subsection (C)(4) of this section to mitigate impacts arising from the extraction activity shall be maintained until completion and acceptance of reclamation activities;
7. Operations shall maintain the permitted buffers and setbacks except where operations encompass contiguous parcels and extraction within the high water table is proposed across adjoining lot lines.

18.42.100 Performance Standards.

A. Applicants for material site permits must include a plan for compliance with performance standards. The purpose of these standards is to:

1. Minimize the impacts of off-site dust movement;
2. Minimize disturbances to other properties created by noise;
3. Minimize the visual impact;
4. Protect the integrity of water bodies and drainage ways; and
5. Ensure that post-material extraction land uses are able to utilize the property.

B. Compliance with the following performance standards shall be described within the material site mining plan:

1. Setbacks.
 - a. At a minimum, setbacks for a material site shall comply with the standards in the applicable land use district as outlined in Chapter 18.20, Land Use Districts; and. :
 - b. Any area within one hundred (100) horizontal feet of a water body, in existence prior to permit issuance, shall remain undisturbed by material site activities.
2. Buffers.
 - a. Where a material site parcel boundary abuts a neighboring property or public right-of-way, a buffer shall be provided to minimize the visibility of the operation from public view, and to do so in a manner which is consistent with the pre-existing visual character of the landscape. The review authority shall determine which of the following form(s) of buffer is acceptable:
 - i. A minimum of fifty (50) feet of undisturbed natural vegetation, measured perpendicularly from the parcel boundary;
 - ii. A planted, earthen berm at least six (6) feet high with a slope of 2:1 or greater;

- iii. An opaque fence at least six (6) feet high.
 - b. For sites in largely undeveloped areas, and where natural vegetation meets the standard specified above, retention and/or recreation of natural vegetation is the preferred approach to meeting the above standard;
 - c. At its discretion, the review authority may waive buffer requirements where the topography of the property or the placement of natural barriers makes screening not feasible or unnecessary. Buffer requirements shall be made in consideration of and in accordance with existing uses of adjacent property at the time of approval of the permit. There is no requirement to buffer the material site from uses which commence after the approval of the permit.
3. Site boundaries. All property boundaries must be identified in the field by markings such as metal posts, stakes, flagging, or blazed trees;
4. Hours of Operation. Extraction operations shall not be permitted between the hours of 11:00 p.m. and 7:00 a.m., however, the review authority may place alternative operational hours if appropriate for the operation's context.
5. Dust Mitigation. Water or magnesium chloride shall be applied to haul roads within the material site. The review authority may also require additional dust mitigation measures including, but not limited to wheel washers and/or track outs at site entrance points, or active revegetation programs. Vehicles transporting sand and gravel will be maintained and operated to not spill gravel, sand or dust onto public roads.

Dust mitigation shall be designed to be effective year round, including periods when the operation is not active;

6. Lighting Standards. Exterior light sources shall be shielded and directed towards the ground so as to not create glare on adjoining properties and to help maintain dark nighttime skies;

7. Surface Water Quality and Drainage – Storm water or pit dewatering shall be managed to avoid accelerated erosion or runoff burden on neighboring properties and/or water bodies. Options for water diversion include but are not limited to diversion ditches, trench drains, and culverts. Treatment options for water include but are not limited to settling ponds, retention basins, and constructed wetlands.

8. Hazardous fuels

a. No petroleum products or other waste shall be dumped on the site, access roads, or elsewhere;

b. Fuel storage containers larger than fifty (50) gallons shall be contained in impermeable berms and basins capable of retaining one hundred and ten (110) percent of the storage capacity;

c. Fuel storage containers fifty (50) gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface;

- d. Locate above ground storage tanks farthest from the path of groundwater flow to private and public water systems and farthest from state-approved drinking water source capture areas, and outside the setbacks for all drinking water sources.
9. Site ingress and egress. Internal haul roads and access points to the exterior roadway system shall be the minimum necessary for material site operations. The operator shall locate access points and haul roads away from adjacent residential property to the greatest extent possible;
10. Pit Floor. Pit floor is to remain clean of all non-gravel products;
11. Rock crushing equipment. Rock crushing equipment shall be located, to the greatest extent possible, away from property boundaries;
12. Garbage Disposal. All garbage is to be disposed of at a city-approved location. No garbage is to be buried;
13. Cuts and Fills. All mined slopes are to maintain 2:1 back slope and be benched at overburden/gravel joint area;
14. Site security and safety. Any areas of a material site that pose a hazard to the general public shall be enclosed by perimeter fencing at least six (6) feet in height. Access to the material extraction area shall be strictly controlled by the owner with locking gates or cables at the entrance of access roads.

The project manager shall make reasonable efforts to prevent trespass, nuisance, or unauthorized use such as public dumping, target practice, or unauthorized use of gravel by individuals;

15. Cultural Archeological Resources. In the event that historically or culturally significant artifacts are unearthed during material extraction, all extraction must stop until an analysis of findings can be conducted by a qualified professional.

18.42.110 Compliance with Federal & State Policies.

It is the operator's responsibility to have all necessary permits for conducting material site activities. Applicants may apply for a City of Dillingham Material Site Permit prior to receiving all necessary state and/or federal permits, but the City will only issue a permit once an applicant can provide proof that all other permits have been obtained.

18.42.120 Inspections.

The City may inspect permitted material sites no less than once per calendar year. No advance notice of an inspection is required. Allowing such inspection shall be included as a permit condition of all material extraction site permits. An operator shall allow the City to access the site in an unrestricted manner.

18.42.130 Penalties and Fines.

Any activity on an approved material site that is not compliant with the standards of this Title shall be subject to the fines and procedures outlined in Section 18.60.020, Violations and Penalties.

18.42.140 Renewals.

After the period of approval has lapsed, including any granted extensions, the owner or operator of a material extraction site must reapply for a material site permit renewal. The process for this renewal shall be subject to all applicable sections of this Title.

Section 6. Classification. This is a code ordinance.

Section 7. Effective Date. This ordinance shall be made effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on

_____.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

Subject: An ordinance of the Dillingham City Council amending Title 18 of the DMC to amend Chapter 18.16 Land Use Permits to provide a system of permits and reviews to respond to a variety of land use activities and creating new Title 19, Material Site Regulation

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Planning / Jody Seitz	JS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s): None

Summary Statement.

This ordinance has been vetted through the Code Review Committee and the Planning Commission with final review by the City's Attorney.

At a special meeting of the Code Review Committee in October 22, 2013, the committee addressed issues that arose from several major projects in 2013 on Kakanak Road and at the airport. The projects resulted in about 1M tons of gravel being carried over local state roads with more gravel extraction needed for major road projects in 2014 and 2015.

The issues identified included:

1. noticed that the buffer along the pit had really thinned out;
2. residents were calling the City with concerns about digging in the water table; some noted their water was cloudy;
3. complaints about the dust in the air; dust itself can carry pollutants; can cause poor visibility;
4. noise from activities at the work site 24/7 was an issue with the area residents;
5. company applied for the usual permits including a dust control plan which the City signed off, storm water pollution permission plan to keep water from their activities from running off into the local watershed, construction general permit, DNR permits;
6. firm's dust control permit required watering all the areas when necessary, but a sweeper was not available until late summer;
7. DNR has no authority over non-state plans;
8. DEC was onsite, but primarily was looking to assist the company come into compliance;

9. private wells are not regulated by the State, they will take an interest and start monitoring ground water if it causes a discharge to surface water or if the activity might pose harm to commercial or public wells;
10. neither agency dealt with the most common municipal concerns, buffer zones, baling, noise, hours of operation, dust, and enforcing best practices;
11. City's Comprehensive Plan Chapter 4, Land Use and Housing, didn't deal with gravel or material sites, but the overarching goal was to guide the physical development in Dillingham, responding to elements outlined in the community vision, including strengthening the economy, protecting the natural environment; and enhancing the quality of daily life, in part by:
 - Establishing a generalized land use designation map in Dillingham identifying in broad terms, areas intended for various groups of uses.
 - Designating land for industrial institutional and commercial development to support economic and community development and minimize conflicts with other uses.
 - Ensuring that existing and future land uses protect the natural environment to maintain clean surface water, clean well water, streams and wetlands protected from pollution (channel storm water), healthy subsistence areas, clean air, natural beauty, minimize light and noise pollution.
 - Convening a [stakeholder] group to review and improve the existing land use permit process and develop two new categories of land use policy: a) a conditional use process for specific types of uses and /or scales of uses that have significant off-site impacts, and b) a set of advisory development use guidelines.
12. Does the City of Dillingham wish to have more control over material extraction?
13. What is the best set of tools for doing that?

Discussion:

1. noted an area most misunderstood was the permitting for water, that the State required a permit to withdraw or divert water, but not to be in the water;
2. commented didn't think there was a Corp permit required unless in the wetlands;
3. noted the State had convened a group of stakeholders to address how to protect private wells, referencing the "ten State standard";
4. asked if there was a complaint before this summer about gravel pits, answered just heard remarks about the 20-mile gravel pit outside Dillingham, how there was a lack of reclamation;
5. commented already followed a set of standards when excavating on BIA/BLM lands, including obtaining a reclamation bond before a pit was open, salvaging trees, creating a buffer zone, 4 feet above the water table, City could get a copy from BBNA;
6. stated that permits needed to be applied for prior to construction, not during construction;
7. asked if there was a map of Dillingham that showed where other resources could be potentially extracted and gravel developable land;
8. commented whether the City had the authority to say no to development, that it would be a good question for the attorney;
9. noted other issues that could be addressed included trucks speeding, impact on the existing road, overloading the trucks and dropping sediment on the road, having a mining plan, onsite development (fuel storage, was it safe), ensuring there was a public process so the public was aware of a major project;
10. spoke in favor of at a minimum having a checklist and referred to the City of Kenai's code that required an application for a conditional use permit for surface extraction of natural resources;

11. noted most communities had gone through a similar exercise, that no one wanted more regulations, but at the same time want to at least have some knowledge of what was going on and manage some of the impacts that most affect people;
12. noted would be interested in differentiating between small and large projects, not interested in getting so detailed in our ordinance, referring to City of Kenai Borough's differentiation between counter permit and conditional land use permit;
13. noted a majority of the large Alaskan cities have a zoning code that lays out areas where gravel/material extraction was conditionally permitted;
14. asked how to address a project that started small and then grew in size, answered one option was to require having a mining (operation) plan in place and the permit would be issued with that plan in mind, and there was some expectation of incremental reclamation along the way;
15. commented was not interested in tackling zoning at this time, felt it was a huge public issue, but favored establishing something that was not too cumbersome for contractors, but gave the City a way to guide the development;
16. opined clearly there were some areas that were not compatible to large scale extraction;
17. spoke in favor of Chris Beck bringing forward a full range of options so the committee could make a more informed decision;
18. noted zoning was incredibly flexible and the permitting process was probably a zoning permit process;
19. suggested in addition to contacting BBNA to also contact BBNC and Chogging for their gravel management information;
20. commented property values were not bouncing up and down according to gravel or anything else, but assessments were based on materials used, etc;
21. noted BBNC was planning to hold a session on Understanding Gravel at their leadership conference in December, and to email them if interested in attending.
22. favored having something in place before spring when construction would ramp up;
23. noted a tentative guideline would be to report to the Council at the December meeting to get their concurrence, prepare a document to introduce to the Council in January, and adopt in February.

Over a period of six months (October 2013 through March 2014), the committee worked with the consulting firm of Agnew::Beck to review the issues and held several workshops inviting contractors to attend and provide their input. This proposed ordinance is a collaborative effort with input from the Code Review Committee, the Planning Commission, and interested stakeholders.

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2014-08

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AMENDING TITLE 17 OF THE DILLINGHAM MUNICIPAL CODE TO ALLOW FOR PRIVATE ACCESS TO CERTAIN SUBDIVISIONS AND ESTABLISH MINIMUM STANDARDS FOR PRIVATE ACCESS TO SUBDIVISIONS AND TO AMEND DEFINITIONS AND MAKE OTHER AMENDMENTS TO PLATTING REQUIREMENTS

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Amendment of Section 17.03.030(G). Section 17.03.030(G) of the Dillingham Municipal Code is hereby amended to read as follows [deleted language is shown as strikethrough, and new language is underlined]:

- G. "Easement" means a grant by the property owner to another person or to the public ~~of~~ for the use of any designated part of the property for specific purposes and is considered an interest in land.

Section 2. Amendment of Section 17.03.030(Q). Section 17.03.030(Q) of the Dillingham Municipal Code is hereby amended to read as follows [deleted language is shown as strikethrough, and new language is underlined]:

- Q. "Redivision" or "replat" means ~~a replat of that lot lines are moved within a subdivision but no additional lots, parcels, or tracts are created which moves lot lines but does not create additional lots, parcels, or tracts.~~

Section 3. Amendment of Section 17.03.030. Section 17.03.030 of the Dillingham Municipal Code is hereby amended by adding definitions of legal and physical access to read as follows [and ordering them alphabetically with existing definitions and relettering accordingly]:

- X. "Legal Access". In this title legal access means one of the following:
1. A dedicated public right of way or easement exists that meets the width standards of this title;
 2. A State of Alaska maintained road available for public use is adjacent to the parcel;
 3. A judicial order establishes access;
 4. A dedicated private easement exists which
 - a. does not result in a landlocked unsubdivided remainder parcel;
 - b. is perpetual and irrevocable;
 - c. is recorded;
 - d. has been approved by all federal, state and city authorities whose approval is required;

- e. allows for construction and maintenance of a road of the standards required by this title.
- Y. "Physical Access". In this title physical access means either that an easement identified on a plat is already in use or is practical to construct or expand to allow access by automobile considering the physical characteristics of the property on which the easement is located.
- Z. "Private Access Street". In this title "private access street" means roads which provide legal access to a residential subdivision of not more than seven lots by use of a dedicated private easement.

Section 4. Amendment of Section 17.07.100(A). Section 17.07.100(A) of the Dillingham Municipal Code is hereby amended to read as follows: [new language is underlined]:

- A. The preliminary plat shall be drawn with waterproof nonfading black ink or legibly drawn with pencil on a good quality reproducible medium at a scale of one inch equals one hundred feet or at a scale of one inch equals fifty feet if the lots are ten thousand square feet or less in size, unless a request for the use of another scale is approved by the director.

Section 5. Amendment of Section 17.07.100(B)(17). Section 17.07.100(B)(17) of the Dillingham Municipal Code is hereby amended to read as follows [new language is underlined]:

- B.
 - 17. Contours at two-foot vertical intervals or at more frequent intervals if required by the planning commission for land of unusual terrain characteristics. Contours at 5' interval shall be permitted on undisturbed ground for created lots over 5 acres. All pertinent elevations shall be shown;

Section 6. Amendment of Section 17.19.030. Section 17.19.030 of the Dillingham Municipal Code is hereby amended to read as follows [deleted language is shown as ~~strikethrough~~, and new language is **emboldened** and underlined]:

- A. Every lot shall have access directly from a dedicated ~~public~~ right-of-way or easement.

Section 7. Amendment of Section 17.19.050. Section 17.19.050 of the Dillingham Municipal Code is hereby amended to read as follows [deleted language is shown as ~~strikethrough~~, and new language is underlined]:

Section 17.19.050 Streets — Dedicated Right-of-way or easement width and improved width.

- A. Arterials Road. One-hundred-foot public dedicated right-of-way and twenty-six-foot improved width;
- B. Collectors Street. Sixty-foot public dedicated right-of-way or easement and twenty-six-foot improved width;

- C. Major Local Streets. Sixty-foot public dedicated right-of-way or easement and twenty-four-foot improved width;
- D. Minor Local Streets. Fifty-foot public dedicated right-of-way or easement and twenty-foot improved width;
- E. State highways shall be subject to appropriate state standards;
- F. Private Access Streets shall have at least a fifty-foot dedicated right-of-way or easement and a 16 foot improved driving surface.

Section 8. Amendment of Section 17.19.060(F). Section 17.19.060(F) of the Dillingham Municipal Code is hereby amended to read as follows [deleted language is shown as strikethrough, and new language is underlined]:

- F. Cul-de-Sacs. Cul-de-sacs in areas served by community or city sewer and water systems shall have a maximum length of six hundred feet with a minimum turn-around ~~diameter~~ radius of sixty feet. Cul-de-sacs in areas served by on-site sewer and water systems or only by city or community sewer systems shall have a maximum length of one thousand three hundred feet.

Measurement of cul-de-sacs shall be along the centerline of the roadway from the near side of the intersecting street to the farthest point of the cul-de-sac.

Section 9. Amendment of Section 17.19.120. The Title of Section 17.19.120 of the Dillingham Municipal Code is hereby amended to read as follows [new language is **emboldened** and underlined]:

17.19.120 Utility Easements.

Section 10. Effective Date. This ordinance is effective upon adoption.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on _____.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

Subject: A resolution of the Dillingham City Council amending Title 17 to allow for private access to subdivisions and making other amendments to Title 17

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Public Works / Francisco "Pancho" Garcia	PC	
X	Planning / Jody Seitz	JS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s): None

Summary Statement.

Some subdividers would prefer to not have the roads into their subdivisions be public roads. The ordinance proposes to make private access easements legal access under the Dillingham Municipal Code. Making private access easements legal access by code would allow citizens to choose that as a form of subdivision access rather than having the Variance requirements.

This code also spells out road standards to be met by those proposing new subdivisions where the access into those subdivision lots would be private access. All new private subdivisions would have to provide a minimum 50 foot easement and a 16 foot improved surface for the road to serve no more than 7 lots. Any further subdivision would require that the road be constructed to 20' and be dedicated to the City.

Title 17.07.100(A) allows the scale of the plat to be adjusted on request.

Title 17.07.100(B)(17) is also amended to allow 5' contours over undisturbed ground for created lots over 5 acres. This is reasonable given the size of some subdivisions.

Title 17.19.050 definitions are amended to include legal and physical access and the conditions meeting those definitions. This section also amends Streets to include the words "Dedicated, and public" under the right of way or easement width and improved width. The

change clarifies the standards for all public and private dedicated rights of way or easements.

Title 17.9.060 amends cul-de-sacs to have a minimum turnaround radius, instead of diameter, of 60 feet. It was thought that the code was intended to say radius, because of the size of turnaround required by City busses and large machinery and to accommodate snow and utilities. The suggestion was made by Coastal Surveyors from to his experience designing subdivisions.

Here is a table comparing the Dillingham Municipal Code with other municipalities' regarding cul-de-sacs:

Community	Radius of cul de sac	Diameter
Bethel	Minimum 70 ft.	140 ft.
Bristol Bay Borough	Minimum 60 ft.	120 ft.
Cordova	Minimum 50 ft.	100 ft.
Dillingham current code		60 ft., min turnaround diameter
Dillingham proposed	Minimum 60 ft.	120 ft.
Fairbanks	Minimum 50 ft.	100, min. 85 ft turning diameter
Valdez	Minimum 50 ft. rural 80 ft.	100-160 ft.

For consideration here are some cul-de-sac radii of Dillingham subdivision roads as recorded on the subdivision plats:

Snag Point Subdivision, Kokwok, Ostukok Circles	50' radius
Stelling Subdivision, Pleier road	40' radius
Napaq Subdivision, Birch Circle	50' radius + 10 ft. easement
Highbush Subdivision, Creekside Lane, Caroline Drive	60' radius + 20 ft. easement
Floatplane Subdivision, Navajo Circle, Cessna Drive	50' radius + 10 ft. easement
Cessna Drive	60'diameter temp. turnaround
Waskey Road Subdivision, William Tennyson Lane	65' radius + 10 ft. easement
Cedar Subdivision Addition 1, Cedar Circle	50' radius + 10 ft. easement
Buckshot Subdivision, Maqi Circle	50' radius + 20 ft. easement
Crystal Subdivision, Charlee Road	50' radius + 15 ft. easement
Neqleq Subdivision, all cul-de-sacs	50' radius + 20 ft. easement
Ekuk Subdivision, Ekuk Circle	50' radius + 15 ft. easement

Finally, the title of Section 17.19.120 is amended to reflect that this section deals with utility easements, not access easements.

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2014-09

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL AUTHORIZING THE DISPOSAL OF MUNICIPAL PROPERTY

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Authority. This ordinance is adopted pursuant to authority granted by DMC 5.30.010, City rights and powers.

Section 2. Classification. This is a non-Code ordinance.

Section 3. Authorization of Sale. The City Council hereby authorizes the disposal of a portion of City land downtown by sale under t.30.010 (A).

Section 4. Legal Description. Lot1A Block 22 U.S. Survey 2372AB, Township 13 South, Range 55 West, Seward Meridian.

Section 5. Findings. The City Council hereby finds that the disposal is for a public purpose, in that the sale of this land will eliminate an encroachment into the City cemetery; with no impact to surrounding properties or trails.

Section 6. Type of Disposal. This disposal is of all interest in a triangular piece of land within the city's cemetery adjacent to Lot 3 Block 22 USS 2732, approximately 676 square feet, at market value.

Section 7. Value of City's Interest. This is based on the current assessment of Lot 3, Block 22, the most relevant indicator of the contributory value of the triangular parcel. The City estimates the fair market value of the property is about \$2.80 a square foot, for a total value of \$1,900, based on the value of Lot 3 Block 22 USS 2732, and if associated with Lot 3 for the remainder of the 2014 tax year.

Section 8. Time, Place and Manner in Which Disposal Shall Occur. The property shall be purchased by the owner of Lot 3, Lyle and Silke Smith. The actual disposal shall occur once the final plat of the property has been approved by the City, no later than August 31, 2014.

At this time, the thirty (30) day provision of DMC 5.30.030 will have been met. At least thirty days is required between the time the disposal ordinance is introduced and the time that it is finally adopted by the City Council.

Section 9. Effective Date. This ordinance is effective upon passage.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council
on _____.

SEAL:

Alice Ruby, Mayor

ATTEST:

Janice Williams, City Clerk

Subject: A resolution of the Dillingham City Council approving the disposal of a portion of Lot 1A Block 22 USS2732

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Public Works / Francisco Garcia	FG	
X	Planning / Jody Seitz	JS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- PCR Resolution No. 2014-06
- Proposed Resubdivision of Lot 1A and Lot 3 B22 USS 2732

Summary Statement.

The owner of Lot 3 owns a garage which encroaches into Lot 1A Block 22 USS 2732, the City's cemetery. The owner of the garage would like to keep the garage and clear up the non-conformity. Lyle Smith is proposed to purchase about 676 ft² of the city's lot, (Lot 1A Block 22 USS 2732). The City Assessor's opinion is that the small lot is valued at approximately \$2.80 ft² or, about \$1900.

A visual examination of the area did not find any graves within the area in question. The property transfer will not harm use of existing trails.

In order for this land disposal to go forward it must be approved by the Dillingham City Council under Title 5 of the Dillingham Municipal Code with a finding that the disposal promotes a public purpose, that of removing non-conformities.

The introduction of this ordinance starts a 30 day comment period during which the ordinance must be posted at 3 public places.

5.30.030 Public notice. At least thirty days is required between the time a disposal ordinance is introduced and the time that it is finally adopted by the city council. Once an ordinance is introduced, it will be posted at those places outlined in municipal code for thirty days and may serve as the only public notice of disposal. (Ord. 94-16 (part), 1995.)

This ordinance will be recommended for a public hearing on June 6, 2014 to meet the 30-day noticing requirement.

RESOLUTION 2014-06
A RESOLUTION OF THE DILLINGHAM PLANNING COMMISSION

Recommending Property Sale for Lyle Smith property (Edra Garage)

WHEREAS, a historical property known locally as the Edra Garage encroaches on Lot 1A Block 22 USS 2732; and

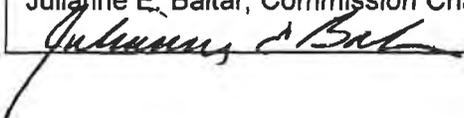
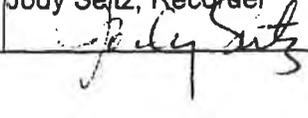
WHEREAS, the Owner of Lot 3 wishes to purchase a portion of Lot 1A to be able to maintain the garage in its original location; and

WHEREAS, there do not appear to be any graves within the area in question; and

WHEREAS, in order for any interest in City property to be transferred to another party, it must be approved by the Dillingham City Council under Title 5 of the Dillingham Municipal Code;

THEREFORE, the Planning Commission recommends the disposal of this property.

ADOPTED by the Dillingham Planning Commission February 19, 2014.

Julianne E. Baltar, Commission Chair 	Jody Seitz, Recorder 
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CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-18

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING TASK ORDER NO. 1 WITH CH2M HILL TO INSPECT PENNRAM MODEL PHCA-1700 INCINERATOR AND TO CONTINUE WORK ON ASSURANCES THAT THIS SYSTEM WILL BRING THE DILLINGHAM LANDFILL INTO COMPLIANCE WITH STATE OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (AKDEC)

WHEREAS, the City of Dillingham approved a Professional Services Engineering and Design Contract with CH2M Hill on August 27, 2013; and

WHEREAS, the Scope of Work for the above contract was to work with the City to develop a comprehensive "Request for Proposal" (RFP) document which would seek proposals from firms engaged in the manufacture and installation of municipal solid waste disposal systems and to develop a RFP for a building to house the equipment; and

WHEREAS, a RFP for the Thermal Conversion System was advertised and a contract to award was recommended at the March 13 regular Council meeting to Penram Diversified for their model TRU-1100 thermal reduction unit, contingent upon a site inspection; and

WHEREAS, the Penram Model TRU-1100 was determined not to be the capacity that the City needed for municipal waste at the landfill and Model PHCA-1700 was recommended; and

WHEREAS, the site inspection and further research on the building and equipment was not in the current scope of the original project; and

WHEREAS, the City is recommending that an engineer from CH2M Hill accompany the City Manager and a Council Member on the inspection of the factory of Penram Diversified to view a similar working model in operation; and

WHEREAS, the inspection, additional research on the building and further documentation will provide the City assurance that the recommended thermal conversion system is what will help bring the Dillingham Landfill into compliance with DEC;

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes the City Manager to task CH2M Hill with funding to accompany the City on an inspection of Penram's factory and to provide the documentation and research necessary to purchase the system;

BE IT FURTHER RESOLVED that the fee estimate for this work is \$21,942 including professional services and reimbursable costs to all be paid from a Landfill Legislative Appropriation grant.

PASSED and ADOPTED by the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

Subject: A resolution of the Dillingham City Council approving Task Order No. 1 with CH2M Hill to inspect Penram Model PHCA-1700 and to continue work on assurances that this system will bring the Dillingham landfill into compliance with State of Alaska Dept. of Conservation (AkDEC)

Agenda of: April 3, 2013

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	Public Works Director / Francisco Garcia	FG	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes X No _____ Funds Available: Yes X No _____

Other Attachment(s): Task Order No. 1

Summary Statement.

The attached Task Order No. 1 would authorize the City Manager to offer a proposal to CH2M Hill to accompany City representatives to visit Penram Diversified's factory and inspection of incinerator units and to provide additional research and required documents for equipment, building and documentation of this project.

At the March 13, Council meeting the Council authorized the City Manager to execute a contract for the purchase of a customized diesel fired, Penram Model TRU-1100 thermal reduction unit rated 1100 lbs/hr. and equipment for loading it.

Manager Loera reported this was the City's second attempt to go out to bid for a thermal conversion system. In the first RFP, the City had received one bid, but the fuel consumption of 280 gal/burn was unacceptable. A requirement in the second RFP was for a system using 75 gallons or less per burn. In the scoring done by a committee of five, the firm of Incinerat8 came out the highest, but when the firm provided a performance guarantee, the fuel consumption was about 200 gallons per burn.

Manager Loera provided a spreadsheet comparing the vendors' projected capital and diesel cost over a ten year period. After further investigation it was determined that Penram's second bid for a 5 ton system was not adequate for the amount of municipal waste that the City generates. After consulting with them they were able to recommend a

Model PHCA-1700 incinerator which is rated at 1700 lbs/hour of mixed waste. They refer this system as a Conventional system that will burn continuously during the summer and has a fuel capacity of approximately 61 gallons in a 24 hour period.

The factory was visited on March 24th by Paul Lieberg, Steve Jenkins (CH2M Hill) and Rose Loera. This task order was intended to be approved on March 13, 2014 but was inadvertently left off.

Funds for this will be from the Landfill Legislative Appropriation grant.

TASK ORDER

LANDFILL TASK ORDER NUMBER: 1

PROJECT NAME: Inspection of Pennram Model PHCA-1700 and the factory and to continue to work on assurances that the system will bring the Dillingham Landfill into compliance with DEC.

This Task Order pertains to an Agreement by and between the City of Dillingham ("OWNER") and CH2M Hill which was signed on August 27, 2013, ("the AGREEMENT") for services related to the Consultant shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

PART 1.0 PROJECT DESCRIPTION

- A. Visit to Pennram factory and inspection of Model PHCA-1700 to include up to 40 hours of time and round trip travel expenses to Pennsylvania estimated at \$6,500).
- B. Additional research and required documents for equipment, building and documentation of project not to exceed 30 hours.

PART 2.0 PAYMENTS TO CONSULTANT

The fee proposal is a time & materials basis with a not-to-exceed amount of \$21,492 with funds coming from the Landfill Legislative Appropriation grant.

This Task Order is executed this _____ day of _____, 2014.

City of Dillingham
"OWNER"

By: Rose Loera

CH2M Hill
"CONSULTANT"

By:

Signature: _____
Title: City Manager

Signature: _____
Project Manager

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-19

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING THE 2014 BBEDC COMMUNITY BLOCK GRANT (CBG) FOR MATCHING STATE AND FEDERAL GRANT FUNDS

WHEREAS, the Bristol Bay Economic Development Corporation (BBEDC) provides Community Block Grant (CBG) funding in order to provide BBEDC communities with the opportunity to fund projects that promote sustainable community and regional economic development; and

WHEREAS, the City of Dillingham is a duly organized governing entity, eligible to participate in the Bristol Bay Economic Development Corporation (BBEDC) Community Block Grant (CBG) Program; and

WHEREAS, the City of Dillingham had applied for a Community Development Block Grant (CDBG) with the State of Alaska and intended to use the 2014 BBEDC CBG in the amount of \$250,000 for match requirement; and

WHEREAS, the City of Dillingham has submitted the 2014 grant application to BBEDC using the Resolution No. 2014-19 approving the application for the State CDBG; and

WHEREAS, the City received notification that the CDBG grant was not funded and would recommend that these funds be used as a match for the Municipal Matching Grant with the State of Alaska for the wastewater treatment plant project; and

WHEREAS, the City of Dillingham affirms that the projects will provide economic and social benefits for residents, which is one of the criteria for a CBG; and

WHEREAS, a letter with a description and budget for the project has been provided to BBEDC; and

WHEREAS, the City of Dillingham acknowledges receipt of and agreement to conform to the BBEDC policies for the CBG program;

NOW, THEREFORE, BE IT RESOLVED that the Dillingham City Council approves and authorizes the submittal of the grant packet for participation in the BBEDC CBG program.

PASSED and ADOPTED by the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

City Clerk

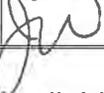
Subject: A resolution of the Dillingham City Council approving the 2014 BBEDC Community Block Grant (CBG) for matching State and Federal grant funds

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade		
X	City Clerk / Janice Williams		

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

Summary Statement.

The City is applying for the FY2014 BBEDC Community Block Grant and would like to use the grant in the amount of \$250,000 to match the State \$3 million Municipal Matching Grant that has a 30% match requirement. This grant would be used to continue the work needed at the sewage lagoon.

The City has approximately \$400,000 left from the Legislative Appropriation that was used to complete Phase One of the facility plan. The Legislative and BBEDC CBG grants will both be used on Phase Two of the project.

Phase Two of the WWTP project will include developing a septage receiving station and addressing the aeration system at the lagoon. Both of these projects will address the deficiencies in the City's lagoon.

The amount that the City is eligible to apply for in 2014 is \$250,000.

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-20

A RESOLUTION OF THE DILLINGHAM CITY COUNCIL APPROVING THE TRANSITION OF THE DILLINGHAM MUNICIPAL LANDFILL FROM OPEN BURNING MUNICIPAL WASTE TO COMPACTING AND INCINERATION

WHEREAS, the City of Dillingham is in the process of renewing their Solid Waste Landfill Permit with the Alaska Department of Environmental Conservation (AkDEC); and

WHEREAS, the City has been told by AkDEC that it will not be able to open burn the municipal waste with the new permit; and

WHEREAS, the City has been exploring the different options such as compacting, baling and incineration for disposal of municipal waste; and

WHEREAS, the current location of the Municipal Landfill will not be able to handle the waste stream for many more years, which at its peak is estimated at about 20 tons/day; and

WHEREAS, the City has chosen incineration for disposal of its municipal waste which will reduce the bulk by about 95%; and

WHEREAS, the Penram Diversified Manufacturing Corporation is recommending a customized model PHCA-1700 incinerator rated 1700 lbs/hour of municipal waste; and

WHEREAS, during the March 13, 2014 council meeting the Council approved Action Memorandum No. 2014-03 for a tentative contract with Penram for a system that would handle about 11 tons per day with a fuel consumption of 71 gals, for a cost of \$671,358; and

WHEREAS, the recommended model PHCA-1700 system which will handle 20 tons a day, with an estimated fuel consumption of 61 gals, will be about \$856,408; and

WHEREAS, the time frame to get the incinerator installed and running will be the early part of 2015; and

WHEREAS, in the interim the City will need to compact the municipal waste at the landfill which is going to take additional equipment and cell preparation; and

WHEREAS, it is estimated that the entire cost of getting the landfill transitioned from compacting to incineration will cost about \$2.1 million; and

WHEREAS, the City has a legislative appropriation with a balance of \$1.8 million to be used for the landfill compliance process; and

WHEREAS, the City may be required to contribute about \$300,000 to complete the process;

NOW, THEREFORE, BE IT RESOLVED that the Dillingham City Council approves the following purchases from the legislative appropriation grant for a total amount of \$1,026,408, with a breakdown as noted below:

1. Pennram Model PHCA-1700 incinerator to include equipment, spare parts, freight, performance bond, installation and training in the amount of \$856,408;
2. Purchase of a used compactor with clam bucket to be used to place and cover garbage at about \$120,000; and
3. Purchase of gravel to build up existing cell berm at about \$50,000.

BE IT FURTHER RESOLVED that the Dillingham City Council understands that additional funds may be needed after the legislative appropriation is exhausted and staff will come forth with an additional resolution requesting the funds.

PASSED and ADOPTED by the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

City Clerk

Subject: A resolution of the Dillingham City Council approving the transition of the Dillingham Municipal Landfill from open burning municipal waste to compacting and incineration

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes X No _____ Funds Available: Yes X No _____

Other Attachment(s):

- Spreadsheet Summarizing the Bid Process for Thermal Conversion System
- Landfill Estimated Budget

Summary Statement.

The purpose of this Information Memorandum is to authorize the Mayor or City Manager to proceed with the purchase of an incinerator from Pennram – Model PHCA 1700 - \$856,408, the purchase of a compactor with clam bucket - \$120,000 and purchase of gravel to build up the existing cell at the landfill - \$50,000 to prepare for compacting starting June 1, 2014. The funds for these purchases would come from the \$1.8M legislative appropriation.

During the March 13, 2014 the council approved a tentative contract with Pennram for a system that was thought to be adequate. After a visit to the factory, Pennram recommended the Model PHCA 1700 incinerator that has a capacity of incinerating 1,700 lbs/hour at a higher cost than what was originally proposed.

The City of Dillingham has been exploring an incineration system for over a year that would incinerate the municipal waste by 95%. The incineration process will extend the life of the existing landfill for many years.

It was originally thought that the City would be able to start incinerating soon after the equipment landed in Dillingham as the plan was to build the building and lay the foundation before its arrival. After the visit to the Pennram factory, it was realized that the equipment size and weight will require us to build the building around the system which may bring the City to February of 2015 for the actual start-up of the incinerator.

With this extended time of needing to compact the City needs to purchase a compactor that would be used exclusively for the landfill and we need to build up the existing cell to handle the waste we will be compacting.

The City owns an excavator that has an attachment that can compact but this piece of equipment is needed for the Snag Point erosion and scrap metal projects. Juggling the use of this equipment is not recommended because of the short construction season.

**City of Dillingham
Fiscal Note**

Agenda Date: April 3, 2014

Request: _____

ORIGINATOR: Carol Shade

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT REQUESTED:	\$ 1,026,408.00	FUNDING SOURCE	State of Alaska
FROM ACCOUNT		Project	
4470 8520 30 81 3811 0	\$ 1,026,408		Landfill Oxldation Grant
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date:	4/3/2014

EXPENDITURES

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Contract				
Major Equipment				
Land/Buildings				
Miscellaneous				
TOTAL OPERATING	\$ -	\$ -	\$ -	\$ -

Capital	\$ 1,026,408.00			
---------	-----------------	--	--	--

REVENUE				
---------	--	--	--	--

FUNDING

General Fund				
State/Federal Funds	1,026,408.00			
TOTAL FUNDING	\$ 1,026,408.00	\$ -	\$ -	\$ -

POSITIONS

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

See R 2014-20

PREPARED BY: Carol Shade

April 3, 2014

DEPARTMENT: Finance Department

April 3, 2014

Landfill Estimated Budget	Grant	2,000,000.00
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Known Items

DEC permit expires 6/1/14, CH2 engineers are working on permit
 After 6/1 no more open burn, except for paper and non treated wood
 Current dump cell is full, berm needs to be made higher
 Current dump cell about 10,000sft (200x100/2)
 Metal salvage is scheduled for summer, equipment onsite
 An area needs to be set aside for septage dumping
 Cover soil or gravel is not available-needs to be mined or purchased
 Items completed to date, Procure Engineer, RFP incinerator 200,000.00
 City overhead cost

Remaining Budget	1,800,000.00
------------------	--------------

Estimated Event and Cost

Travel to visit plant	15,000.00
purchase incinerator,parts,setup,freight,testing	856,408.00
building site selection,test holes & soils report	15,000.00
sitework estimate for new building	100,000.00
bdg engineering Fire Marshall permit	50,000.00
utilities, water, power, telephone, drainage system	25,000.00
concrete (based on 60x90)	140,000.00
metal building, no insulation (winter construction)	400,000.00
payment & performance bonds	15,000.00
mobilize incinerator, crane, labor for setup, temporary heat	15,000.00
reach forklift to load incinerator	40,000.00
fence incinerator building w/ electric bear fence (spring 2015)	15,000.00

Balance remaining from Grant	113,592.00
------------------------------	------------

Events That Need To Happen

build existing cell berm higher, using gravel	50,000.00
isolate area to dump burn ash (paper & wood ash) 1000-1500sft	
?repair transfer trailers	10,000.00
mine cover material & stockpile	50,000.00
landfill loader work burn and stockpile cover for compactor	
compactor w/ clam bucket to place and cover garbage	120,000.00
fence dump cell & provide electric fence for bears	25,000.00

Amount unfunded	141,408.00
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Schedule of Events

Travel to visit Pennram	3/25-3/27
Purchase	4/4/2014
Delivery to SEA dock	9/2/2014
Arrive DLG	10/15/2014
RFP for building design and fire marshall permit	4/4/2014
30 days to advertise	4/7 to 5/5
Award design contract	5/11/2014
45 days to design	6/23/2014
Fire Marshall permit	7/10/2014
30 days to advertise for construction contractor	7/21 to 8/20
council approval and award contract	8/29/2014

It takes a minimum of two months to get a non standard metal building there is no way to make the last barge with the building based on above schedule. Two months might be tight fabrication time in mid summer; however, using two months results in a completed design and building purchase by the end of June. If that could happen, the building will be erected in late October and November. The subcontractors, mechanical, electrical, sprinkler will be in there till December. We will be installing the incinerator in late December to early January. This building is not insulated or heated.

We will need to compact garbage for seven months based on above schedule.

Estimating two transfer trailers and two refuge trucks dump a day at 40cyds each, results in 160cyds per day. A ten thousand square foot cell twelve foot high will hold about 4400cyds/160 is about 28 days of dumping. Divided by open days is 7 weeks in the current cell. Using 2500cyds/month and 7 month compacting duration, we need a cell that will hold around 20,000cyds. Based on the above estimated cubic yards, if we had a 30,000sft cell (150x200) the City will fill it about two foot a month.

The City needs to build another cell.

Cost estimate for cell	150,000.00
Final Budget Balance	291,408.00

**Dillingham TCS, RFP 14-01 Submittals
Supplier Cost Comparison**

Supplier	Year 1		Year 1-2		Year 1-3		Year 1-4		Year 1-5		Year 1-6		Year 1-7		Year 1-8		Year 1-9		Year 1-10		
	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	Capital	Diesel*	
Eco Waste Solutions																					
11 ton system w/1 burner	\$1,045,561	\$61,454	\$64,527	\$67,753	\$71,141	\$74,698	\$78,433	\$82,354	\$86,472	\$90,796	\$95,355										
Total All @ 75 gal. diesel	\$1,107,015		\$1,171,542		\$1,239,295		\$1,310,435		\$1,385,133		\$1,463,566		\$1,545,920		\$1,632,392		\$1,723,187		\$1,818,573		
Pennram 1st Bid																					
2 ea 5.5 ton system w/1 burner telehandler (loading) addl Tech support	\$610,061 \$175,000 \$5,720	\$90,132	\$94,639	\$99,371	\$104,339	\$109,556	\$115,034	\$120,786	\$126,825	\$133,166	\$139,824										
Total All @ 110 gal. diesel	\$880,913		\$975,552		\$1,074,922		\$1,179,281		\$1,288,817		\$1,403,851		\$1,524,637		\$1,651,461		\$1,784,627		\$1,924,452		
Pennram 2nd Bid																					
2 ea 2.5 ton system w/1 burner telehandler (loading) addl Tech support Fuel tank spare parts	\$551,461 \$48,000 \$5,720 \$8,000	\$58,177	\$61,086	\$64,140	\$67,347	\$70,715	\$74,250	\$77,963	\$81,861	\$85,954	\$90,252										
Total All @ 71 gal. diesel	\$671,358		\$735,197		\$799,337		\$866,684		\$937,399		\$1,011,649		\$1,089,612		\$1,171,473		\$1,257,426		\$1,347,678		
Pennram 3rd Bid																					
Model PHCA-1700 Incinerator includes freight, bond & install spare parts Fuel tank	\$778,281 \$20,144 \$8,000	\$49,983	\$52,482	\$55,106	\$57,862	\$60,755	\$63,792	\$66,982	\$70,331	\$73,848	\$77,540										
Total All @ 61 gal. diesel	\$856,408		\$908,890		\$963,996		\$1,021,858		\$1,082,613		\$1,146,405		\$1,213,387		\$1,283,718		\$1,357,566		\$1,435,106		
Inciner8																					
2 ea. 5.5 ton systems w/2 burners 2 ea. hydraulic rams (loading)	\$322,429 \$140,000	\$163,878	\$172,072	\$180,675	\$189,709	\$199,195	\$209,154	\$219,612	\$230,593	\$242,122	\$254,229										
Total All @ 75 gal. diesel	\$523,883		\$588,410		\$656,163		\$727,303		\$802,001		\$880,434		\$962,788		\$1,049,260		\$1,140,055		\$1,235,391		
Total All @ 200 gal. diesel	\$626,307		\$798,379		\$979,054		\$1,168,764		\$1,367,958		\$1,577,113		\$1,796,725		\$2,027,318		\$2,269,440		\$2,523,669		

*Diesel calculated @ \$4.29 gal with a 5% increase each year and based on 122 daily burns during the summer season, and 69 burns during the winter season (only 2X a week) = Total 191 burns/year
 - summer season is May 15-September 15, a total of 122 days or 122 burns
 - winter season is 243 days/7 days a week X 2 burns a week = 69 burns
 All meet DEC requirements

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-21

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL REQUESTING FY 14
PAYMENT IN LIEU OF TAXES FUNDING FROM THE DEPARTMENT OF
COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT**

WHEREAS, 3 ACC 152.100 requires the governing body of a city to adopt a resolution requesting funding from the Payment in Lieu of Taxes Program for cities in the unorganized borough and to submit the resolution to the Department of Commerce, Community, and Economic Development; and

WHEREAS, the City has conducted a regular election during the preceding state fiscal year and has reported the results of the election to the commissioner; and

WHEREAS, regular meetings of the governing body are held in the City and a record of the proceedings is maintained; and

WHEREAS, ordinances adopted by the City have been codified in accordance with AS 29.25.050;

NOW, THEREFORE, BE IT RESOLVED that the Dillingham City Council by this resolution hereby requests distribution from the FY 15 Payment in Lieu of Taxes Program by the Department of Commerce, Community, and Economic Development on the date required by law.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

City of Dillingham Information Memorandum No. R2014-21

Subject: A resolution of the Dillingham City Council requesting FY 15 payment in lieu of taxes funding from the Department of Commerce, Community, and Economic Development

Agenda of: April 13, 2014

Council Action:

Manager: Recommend approval.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s):

- Letter dated March 26, 2014 from State of Alaska, Dept. of Commerce, Community and Economic Development

Summary Statement.

Payment for FY 14 - \$422,987
Payment for FY 13 - \$429,642
Payment for FY 12 - \$421,879
Payment for FY 11 - \$407,510
Payment for FY 10 - \$417,035



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

DIVISION OF COMMUNITY AND REGIONAL AFFAIRS

RECEIVED

APR 1 2014

CITY OF DILLINGHAM

P.O. Box 110809
Juneau, Alaska 99811-0809
Main: 907.465.4751/907.465.4733
Programs fax: 907.465.4761

March 26, 2014

RE: FY 15 PAYMENT IN LIEU OF TAXES PROGRAM FOR CITIES IN THE UNORGANIZED BOROUGH

Dear Municipal Official:

On February 7, 2014, President Obama signed into law the Agricultural Act of 2014 (also known as the "Farm Bill") which included funding for a one-year extension of the Payments in Lieu of Taxes program (PILT). The State of Alaska expects to receive the funds for the PILT program in June 2014 which will allow disbursement to PILT recipients in early July, 2014.

Program regulations require that to receive a FY 15 PILT payment, a city must submit to the Department a resolution which requests payment and certifies that certain minimum standards have been met. Program regulations also require that a city submit to the Department a copy of its FY 15 approved budget (2014 budget for cities operating on a calendar fiscal year) and a copy of its FY 13 audit or certified financial statement. However, if you have already submitted these documents to the Department, you do not have to submit them again.

Enclosed is a sample resolution for the FY 15 Payment in Lieu of Taxes (PILT) Program for Cities in the Unorganized Borough.

The adopted resolution, FY 15 budget, and FY 13 audit or certified financial statement should be submitted to:

Division of Community & Regional Affairs
Payment in Lieu of Taxes Program
P.O. Box 110809
Juneau, AK 99811

Should you have any questions regarding the FY 15 PILT program, please feel free to contact me. I can be reached via email at danielle.lindoff@alaska.gov, or you may call me at 907-465-4733.

Sincerely,

Danielle Lindoff

Local Government Specialist IV

Enclosure: Sample FY 15 PILT Resolution

CITY OF DILLINGHAM, ALASKA

RESOLUTION NO. 2014-22

**A RESOLUTION OF THE DILLINGHAM CITY COUNCIL ACCEPTING THE YEAR END
AUDIT FOR THE FISCAL YEAR ENDING JUNE 30, 2013**

WHEREAS, the Dillingham Municipal Code Section 4.04.050 calls for an "Independent Annual Audit"; and

WHEREAS, the City Council appointed BDO USA LLP to audit the FY2013 financial statements; and

WHEREAS, BDO USA LLP audited the financial statements for the fiscal year ending June 30, 2013 and rendered the opinion that the financial statements present fairly, in all material respects, the respective financial position, changes in financial position, and respective budgetary comparison of the City of Dillingham; and

WHEREAS, Michelle Drew of BDO USA LLP reviewed the Basic Financial Statements, Supplementary Information and Single Audit Reports at a workshop of the City Council on April 3, 2014, attending by way of teleconference; and

WHEREAS, the City Council intends to formally accept the FY2013 audited financial statements by this action;

NOW, THEREFORE, BE IT RESOLVED by the Dillingham City Council that the work of BDO USA LLP and the audited financial statements for the fiscal year ending June 30, 2013 be accepted.

PASSED and ADOPTED by the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

Letter of Interest

For Seat G Dillingham Planning Commission

March 19, 2014

Gregory Marxmiller
PO Box 862
Dillingham, AK 99576
GregoryMarxmiller@Yahoo.com

Dear Honorable Mayor Ruby,

I am writing this to express my interest in serving on the City of Dillingham Planning Commission. I am interested in working to make my community better. I have seen Dillingham grow and I would be grateful for the chance to serve the people of Dillingham. I believe that Dillingham can grow into an even better city given the right set of variables and I look forward to helping make progress. I think that this city is one that is watched by a large audience and is one that may lead rural Alaska to prosperity and a way of doing things right that other cities can model.

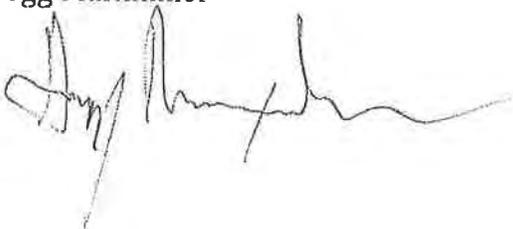
We have great assets: the Yupik culture; the world's largest run of Sockeye Salmon; an international itinerant population; some of the most wealthiest business interests; good schools; strong people, and we are in one of the best places on the planet. I believe we need to preserve those things that are integral to our identity while progressing the infrastructure and assets to become an example of what can happen for Alaskans trying to bridge tradition and the modern world successfully.

I want to do my part to be a good custodian, to serve the things that we have, and to work hard to make it better.

I look forward to continuing the framework for good and sensible governance. I appreciate your consideration for Seat G on the Dillingham Planning Commission.

Respectfully,

Gregg Marxmiller

A handwritten signature in black ink, appearing to read "Gregg Marxmiller", written over a light blue horizontal line.

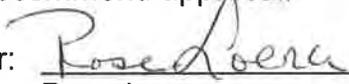
Subject: City of Dillingham Action Memorandum No. 2014-03 Authorize the City Manager to Award the Purchase of a New Loader

Agenda of: April 3, 2014

Council Action:

Manager: Recommend approval.

City Manager:


Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	Finance / Carol Shade	CS	
X	Public Works/ Francisco "Pancho" Garcia	TFA	
X	Port / Jean Barrett	JB	
X	City Clerk / Janice Williams	JW	

Fiscal Note: Yes No Funds Available: Yes No

Other Attachment(s):

- Analysis of three bids received

Summary Statement.

The purpose of this Action Memorandum is to authorize the City Manager to award the purchase of a new loader to replace an existing loader used mainly at the harbor and dock, and is no longer operable. This is an essential piece of equipment for putting in the floats at the harbor and moving around the container vans at the dock. The new loader was purchased before the mid-year budget was approved in order to get it on the first barge. There were three bids for this loader. The City joined the State of Alaska bidding process which turned out to be the lowest responsible and responsive bidder.

The new loader was budgeted in the FY2014 mid-year budget amendment, Ordinance No. 2014-01, that was adopted at the March 13 Regular Council Meeting.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on April 3, 2014.

Alice Ruby, Mayor

ATTEST:

[SEAL]

Janice Williams, City Clerk

**City of Dillingham
Fiscal Note**

Agenda Date: April 3, 2014

Request: _____

ORIGINATOR: Carol Shade

FISCAL ACTION (TO BE COMPLETED BY FINANCE)		FISCAL IMPACT <input type="checkbox"/> YES <input type="checkbox"/> NO	
AMOUNT REQUESTED: \$ 293,980.00		FUNDING SOURCE City of Dillingham	
FROM ACCOUNT 7120 7620 30 33 0000 0 \$ 293,980		Project Equipment Replacement Fund	
TO ACCOUNT:	VERIFIED BY: Carol Shade	Date: 4/3/2014	

EXPENDITURES

OPERATING	FY14	FY15	FY16	FY17
Personnel				
Fringe Benefits				
Contract				
Major Equipment				
Land/Buildings				
Miscellaneous				
TOTAL OPERATING	\$ -	\$ -	\$ -	\$ -

Equipment Replacement	\$ 293,980.00			
-----------------------	---------------	--	--	--

REVENUE				
---------	--	--	--	--

FUNDING

General Fund				
State/Federal Funds				
Equipment Replacement	293,980.00			
TOTAL FUNDING	\$ 293,980.00	\$ -	\$ -	\$ -

POSITIONS

Full-Time				
Part-Time				
Temporary				

ANALYSIS: (Attach a separate page if necessary)

See AM 2014-03

PREPARED BY: Carol Shade

April 3, 2014

DEPARTMENT: Finance Department

April 3, 2014

Brand / Model	Price	Availability / Accessories	Ranking
Volvo L110G	\$268,980.00	Available 2-24-14 with Snow Bucket, Heavy duty gravel bucket, cold weather pkg,	First choice
shipping	\$25,000	1 extra wheel, Pallet forks, 2 spare tires, Training for 3 employees, Comfort Pkg	
Total	\$293,980.00	Diagnostic tools and manuals, Shipping is included in this price	
Cat 962K	301,787.00	Available 2-24-14 with Snow bucket, Gravel bucket, Forks, Cold weather Pkg,	Second Choice
shipping	25,000	Comfort Pkg, Shipping is NOT included in this price	
Total	\$326,787.00		
Case 1021F	367,630.00	Available 2-24-14 with Gravel bucket, Forks, Cold weather pkg, Comfort Pkg	Third Choice
Shipping	25,000.00	we would need to purchase a snow bucket for \$12,995.00 + shipping of \$2500.00	
total	\$392,630.00	Shipping is not included in this price	

Subject: Authorize the City Manager to collaborate with Nushagak Electric for a Community Clean-Up – May 9 – 11, 2014

Agenda of: **April 3, 2014**

Council Action:

Manager: Recommend approval for participating in Community wide cleanup.

City Manager: Rose Loera
Rose Loera

Route To:	Department / Individual	Initials	Remarks
X	City Clerk / Janice Williams	<i>JW</i>	

Fiscal Note: Yes _____ No X Funds Available: Yes _____ No _____

Other Attachment(s): None

Summary Statement. The purpose of this Action Memorandum is to authorize the City Manager to collaborate with Nushagak Electric on a Community wide cleanup from May 9-11, 2014.

There will be free landfill days for bagged garbage only on May 10 & 11. City crew will pick up bags that are on the roads. The yellow bags and gloves can be picked up in the DMV lobby, City Library and City Hall on Friday. There will be a couple of dumpsters in the Public Safety parking lot over the weekend.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on April 3, 2014.

SEAL:

Alice Ruby, Mayor

ATTEST:

Janice Williams, City Clerk

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT DILLINGHAM

NATIVE VILLAGE OF EKUK,)
Appellant,)
v.)
LOCAL BOUNDARY)
COMMISSION; CITY OF)
DILLINGHAM)
Appellees.)

Case No. 3DI-12-22CI

ORDER ON APPEAL

The Native Village of Ekuk appeals the Local Boundary Commission's approval of the City of Dillingham's petition to annex 396 square miles of Nushagak Bay for the purposes of collecting a tax on the fish caught there. The petition, initially filed in June 2010, received final approval from the Commission in December 2011. Voters in Dillingham ratified the annexation in an election held on April 10, 2012. The court now GRANTS Ekuk's appeal in part, VACATES the Commission's December 14, 2011 decision approving the annexation, and REMANDS the petition to the Commission for processing by legislative review.

FACTS

Nushagak Bay is an enormously productive fishing ground. In 2013, 3.7 million fish, a fifth of the total harvest of sockeye, king, pink, and chum salmon in all of Bristol Bay, were caught in the Nushagak fishing district.¹ For centuries, the culture and livelihoods of the people in the region have revolved around fishing. Today, fishing

¹ Cora Campbell & Jeff Regnart, 2013 Bristol Bay Salmon Season Summary, ADFG, at 5 (Sept. 23, 2013).

remains the primary economic activity in all the communities located on the Nushagak Bay or in the watershed.

However, the biggest portion of the catch (and the biggest portion of the revenue from the catch) is netted by fishers from out of state or other parts of Alaska. Of the 2010 catch, only 19% was harvested by Dillingham residents, who make up 19% of the fishing fleet; and 10% was harvested by fishers from other parts of Bristol Bay, who made up 13% of the fishing fleet.² Moreover, the profit margins of local fishers are slimmer than those of their out-of-town counterparts. Citing a 2009 study by the Bristol Bay Economic Development Corporation, Robert Heyano, the president of Ekuk Village Council, stated that "the watershed resident fisherman on average earns less money from the fishery than other Alaskans and non-residents," in part because "he earns less money from employment outside of fishing, and resides in an area with a significantly higher cost of living."³

In 2010, Dillingham decided to annex a large portion of Nushagak Bay in order to impose a 2.5% raw fish tax on all salmon caught and sold from the bay. Arguing that it supplied most of the infrastructure for commercial fishing in the bay, the City wished to recapture some revenues from non-resident fishermen, who do not contribute to the town's coffers by paying property tax or any considerable portion of sales tax. Despite this rationale, the tax would, of course, apply to Dillingham and village fishermen, too.

Annexations of large, uninhabited bodies of water for the purpose of imposing fish taxes are not unusual in Southwest Alaska. Several other communities have effected similar annexations in the past, including Egegik, which annexed part of the

² Pub. Hearing Transcript, at 201 (April 26, 2011)(comments of Barbara Sheinberg).

³ Pub. Hearing Tr., at 106 (April 25, 2011)(comments of Robert Heyano); *see also* Pub. Hearing Tr., at 153-154 (April 26, 2011)(comments of Nick Johnson).

adjacent bay in 1991; Togiak, which annexed Togiak Bay in 1985; and the City of St. Paul, which annexed its surrounding waters in 1986.⁴

However, the annexation of Nushagak Bay is unique in that a large number of communities other than Dillingham not only use the Bay but directly adjoin it. Thus, Clarks Point and Ekuk are, like Dillingham, on the shores of the Bay. Meanwhile, five villages are situated on rivers that empty into the bay: Ekwok, New Stuyahok, and Kolliganek are not far from the estuary on the Nushagak River; Aleknagik is a few miles up the Wood River; and Manokotak is a few miles up the Igushik River. The culture and economies of Dillingham and the villages are inextricably tied to fishing.⁵

Ekuk itself has only two year-round residents. However, it supports a more robust summer population, who come from Aleknagik, Dillingham, and other communities to operate approximately 60 set-net sites. Because there is a cannery at Ekuk, and because large fishing vessels are not necessary to run a set-net operation, Ekuk set-netters do not have to make heavy use of Dillingham's harbor and other fishing infrastructure in order to commercial fish.⁶

On June 14, 2010, the City of Dillingham first posted its petition in several public locations around town, including on Dillingham's website. On July 9, Dillingham formally filed its petition with the Local Boundary Commission. It was not until July 26 that Dillingham provided copies of the petition to the villages. The City accepted written comments until October 4, 2010, and the Village of Ekuk timely filed its responsive brief on that day. In addition to Ekuk, Aleknagik, Manokotak, Ekwok, New Stuyahok and

⁴ Annexation Petition, at 8 (June 14, 2010).

⁵ Pub. Hearing Tr., at 89-95 (April 25, 2011)(comments of Molly Chythlook, natural resource director for BBNA).

⁶ Pub. Hearing Tr., at 99-100 (April 25, 2011)(comments of Robert Heyano).

Clarks Point submitted comments opposing the annexation.⁷ Koliganek did not submit comments. The City also filed its response to comments on October 4.

The Department of Commerce scheduled two public informational meetings to discuss the annexation in January 2011 – one in Dillingham and one in Manokotak. Both were cancelled due to inclement weather, and neither was rescheduled. In late January, the Department distributed a preliminary report on the annexation; public comments were accepted until late February. Both the City of Dillingham and the Village of Ekuk timely filed comments. On April 4, 2011, the Department issued its final report on the annexation, and a public hearing was scheduled for April 25. The hearing began on April 25 and continued until late on April 26, and the Commission held its decisional meeting immediately after public comments closed. At 1:00 AM on April 27, 2011, the Commission approved annexation.

The Commission attached a condition to its approval, requiring the City of Dillingham to attempt to consult with the villages to try to work out a revenue sharing agreement and to file a report on its efforts by November 30, 2011. There was some discussion as to whether approval of the annexation was final, or whether it would not be final until the Commission had received the report. The Commission seemed to decide that the report was merely pro forma, and that the approval was final as of April 27.

On June 10, 2011, the Village of Ekuk filed for reconsideration of several aspects of the annexation, including the Commission's determination that it could not allow the petition to proceed by legislative review, and its decision not to condition approval of the annexation on fulfillment of the consultation requirement. The Commission only granted

⁷ LBC Decision, at 3 (May 26, 2011).

the reconsideration on the second point, so final approval of the annexation was postponed until after Dillingham had submitted its consultation report. On November 30, 2011, the Commission found that the City had satisfied its consultation obligations, and thus that approval of the annexation could take place.⁸ On December 14, 2011 the Commission formally approved the annexation.

The Village of Ekuk appealed in early 2012 and this court held oral arguments on October 7, 2013.

DISCUSSION

The respondent raises a number of points on appeal, arguing that the Commission abused its discretion in allowing the petition to proceed by local action, rather than legislative review; that the Commission had redefined the terms "unpopulated," "large geographical area," and "existing community," thereby developing new annexation standards in violation of the Administrative Procedure Act; and that the Commission had abused its discretion in determining that the annexation was in the best interests of the state. After much deliberation, the court finds that it need only address the first point. The court agrees that the petition should have been processed by the legislative review method, and REMANDS the petition to the Commission for further proceedings consistent with this finding. The court finds that it need not reach Ekuk's remaining arguments because they pertain to a petition that may change once the legislative review process is commenced on remand.

STANDARD OF REVIEW

⁸ Pub. Meeting Tr., at 27 (Nov. 30, 2011)

The Commission's decisions involve agency expertise, so the court must uphold them as long as they have a reasonable basis.⁹ Specifically, "the policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion, which [the court] will review only to determine if administrative, legislative, or constitutional mandates were disobeyed or if the action constituted an abuse of discretion."¹⁰ Here, the court concludes that the Commission disobeyed legislative mandates and abused its discretion in allowing the petition to proceed by the local action method, so the court VACATES the Commission's approval of the annexation.

I. BACKGROUND

Alaska law allows cities to annex adjacent territory by two methods: legislative review and local action. Before beginning its analysis, the court finds it useful to provide a brief description of the key features of each method.

A. Legislative Review

The process for annexation by legislative review is outlined in Alaska's Constitution.¹¹ No vote is required to annex territory by legislative review; instead, the annexing municipality must hold a public hearing "within or near boundaries proposed for annexation" before submitting its petition to the Commission.¹² The Commission must then hold a one or more additional hearings "within or near the boundaries of the proposed change" before rendering its decision.¹³ Upon approving the annexation, the Commission presents the petition to the state legislature during the first ten days of any

⁹ *Mobil Oil Corp. v. LBC*, 518 P.2d 92, 98 (Alaska 1974).

¹⁰ *Port Valdez Co., Inc. v. City of Valdez*, 522 P.2d 1147, 1151.

¹¹ ALASKA CONST. art. X, § 12.

¹² 3 AAC 110.425(a),(d).

¹³ 3 AAC 110.550(a).

regular session.¹⁴ Unless the legislature disapproves of the proposed annexation "by a majority of the members of each house," the annexation will "become effective forty-five days after presentation or at the end of the session, whichever is earlier."¹⁵ The upshot of this process is that the Commission's approval of an annexation almost always means the annexation will take place.

Because it requires such limited public input, annexation by legislative review has been called "forced annexation" by its critics.¹⁶ However, the framers of Alaska's Constitution created the legislative review procedure expressly to insulate boundary-making from one-sided or purely political considerations. As the Alaska Supreme Court found in *Fairview Public Utility Dist. No. 1 v. City of Anchorage*, the rationale for legislative review, and for the creation of the Commission generally, was "that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level."¹⁷ The litigation often attending Commission determinations (including this one) indicates that politics are hardly absent from boundary-making today, but legislative review nonetheless remains the most common method of annexation.¹⁸ The legislature has likewise affirmed the preference for legislative review, providing that a boundary change by legislative review "prevails over a boundary change initiated by local action, without regard to priority in time."¹⁹

¹⁴ AS 29.06.040(b).

¹⁵ *Id.*

¹⁶ Vi Jerrel and Doris Cabana, "Opposition to Annexation," in *Homer News* (April 24, 2003). Accessed at http://homemews.com/stories/042403/let_20030424024.shtml on March 21, 2014).

¹⁷ *Fairview Public Utility District, No.1 v. City of Anchorage*, 368 P.2d 540, 543 (Alaska 1962)(citing Alaska Constitutional Convention, Committee on Local Government, Nov. 28 and Dec. 4, 1955); see also *LBC Regulations & Powers: Hearing on H.B. 133 before the H. Jud. Comm.*, 24th Leg. 36 (April 18, 2005).

¹⁸ *LBC Regulations & Powers: Hearing on H.B. 133 Before the H. Comm. on Cmty. & Reg'l Affairs*, 24th Leg. 8 (Feb. 24, 2005)(statement of Dan Bockhorst).

¹⁹ AS 29.06.040(d).

B. Local Action

The framers did, however, envision some circumstances where annexations would be approved by voters, rather than legislators. Thus, the Alaska Constitution also provides that the Commission "may establish procedures whereby boundaries may be adjusted by local action."²⁰ First, the Commission must, following a public hearing, approve the annexation.²¹ Then, the Commission's approval may be ratified or rejected by one of three local action methods: first, by "city ordinance if the territory [to be annexed] is wholly owned by the annexing city; second, by city "ordinance and a petition signed by all the voters and property owners of the territory;" and third, with "approval by a majority of votes....cast by voters residing in the territory and the annexing city."²² AS 29.06.040 sections (c)(1) and (c)(2) make clear that the votes of residents of the annexing municipality and the territory to be annexed may not be aggregated, but that a majority of votes from *each* area must approve the annexation before it can take place.

II. THE COMMISSION ABUSED ITS DISCRETION IN ALLOWING THE PETITION TO PROCEED BY LOCAL ACTION

At the decisional meeting, Commission Chair Chrystal opined that the Commission could not direct the City to switch the annexation method from local action to legislative review. Commission staff member Brent Williams seconded him, asserting that under 3 AAC 110.610 "you could go from legislative review to local action" but not "the reverse."²³ Thus, the Commission concluded that it could not send the petition back to the city to make the annexation more palatable to the villages and found that it had to

²⁰ ALASKA CONST. art X, § 12.

²¹ 3 AAC 110.150.

²² 3 AAC 110.150(1)-(3).

²³ Pub. Hearing Tr., at 302 (April 26, 2011).

rule on the petition in its present form. This stunted interpretation of the Commission's authority to change annexation methods does not have a reasonable basis: the interpretation is contradicted by case law and legislative history, and counterbalanced by regulations affirming the Commission's authority to alter petitions and to proceed by legislative review. Here, in fact, the particularities of Dillingham's petition required the Commission to change the annexation method to legislative review: proceeding by local action violated the respondents' due process rights.

A. The Commission has authority to specify the method of annexation.

Although the municipality makes the initial selection of annexation method when it prepares its petition, the Commission has authority to change the annexation method as it sees fit.²⁴ In *Port Valdez Co. v. Valdez*, the Alaska Supreme Court rejected the contention that the Commission had to proceed by "step annexation," finding instead that the Commission had discretion to choose, and that "the selection of annexation method made by the Commission... [was] controlling."²⁵ The Supreme Court's holding is supported by more recent legislative history. Testifying on behalf of the Commission at a hearing on a 2005 bill that prohibited aggregate votes in local action elections, Commission staff member Dan Bockhorst explained that "the petitioner... makes the initial determination as to the process it wants to pursue. However, in the course of considering the petition, that process can be amended."²⁶ Thus, both case law and

²⁴ See *Valdez*, 522 P.2d at 1151; *LBC authority to amend petition for municipal boundary change*, OAG, File No. J-66-585-81, *1, n.2 (Oct. 25, 1982); *Hearing on H.B. 133 Before the H. Comm. on Cmty. & Reg'l Affairs*, 24th Leg. 8-9 (Feb. 24, 2005)(statement of Dan Bockhorst, Staff, LBC); see also *LBC Public Meeting 7*, 15 (Jan. 11, 2007)(where Commissioners concluded they had authority under 3 AAC 110.660 to allow the City of Soldotna to annex a 1.6 acre lot "using the least controversial" and the "easiest method").

²⁵ *Valdez*, 522 P.2d at 1151.

²⁶ *Hearing on H.B. 133*, 24th Leg 8-9 (statement of Dan Bockhorst, Staff, LBC).

legislative history firmly support the Commission's authority to choose among annexation methods.

Nor is the Commission's authority to choose an annexation method limited by regulation. 3 AAC 110.610(a), the provision that the Commission claims supports its position, does not disallow conversion of local action petitions to petitions for legislative review at all. Rather, 3 AAC 110.610(a) *authorizes* converting petitions from legislative review to local action in certain circumstances, and says nothing about the reverse. Contrary to the Commission's assertions, this silence does not mean that local action to legislative review conversions are prohibited. Indeed, the Commission's discretion to guide and effectuate boundary changes in the absence of explicit authority has been regularly affirmed.²⁷ Moreover, the Commission's broad authority to alter petitions and to proceed by legislative review includes the authority to switch annexation methods.²⁸

a. The Commission's authority to alter petitions enables it to switch annexation methods.

The Commission may alter the annexation method by which a petition proceeds under 3 AAC 110.440(c) and 3 AAC 110.570(c)(1). 3 AAC 110.440 gives the Commission chair oversight over the Department of Commerce's technical review of a petition. Where "the petition or supporting materials are deficient in form or content," the department, with approval from the Commission, "shall determine whether the

²⁷ *Petitioners for Incorporation of Yakutat v. LBC*, 900 P.2d 721, 725-726 (Alaska 1995) (affirming LBC's power to redraw boundaries upon determination that boundaries in petition do not satisfy statutory requirements); *Oesau v. Dillingham*, 439 P.2d 180, 183-184 (Alaska 1968) (upholding LBC's authority to dissolve the City of Wood River in the absence of express authority); *LBC authority to detach an area from an organized borough*, OAG, File NO. 366-034-86, at *1-*2 (July 23, 1985) (concluding that the LBC has the authority to condition a detachment petition upon subsequent incorporation of a new borough); *LBC authority to amend petition for municipal boundary change*, OAG, File No. J-66-585-81, *1 (upholding LBC's authority to amend boundaries of proposed area to be annexed).

²⁸ See 3 AAC 110.140; 3 AAC 110.440(c); 3 AAC 110.570(c)(1).

deficiencies are significant enough to require new authorization for the filing of the corrected or completed petition.²⁹ Thus, 3 AAC 110.440(c) enables the Commission to rectify not only minor flaws in a petition, but also errors serious enough to require the petition to be refiled. If a petition is "deficient in form or content" because it followed the incorrect annexation method, then 3 AAC 110.440(c) authorizes the Commission to send the petition back to be refiled according to the proper method.

Even after the technical review of a petition has taken place, the Commission still has the opportunity to correct errors in the petition. Under 3 AAC 110.570(c)(1), if the commission determines that a proposed municipal annexation "must be altered or a condition must be satisfied before the proposed change can take effect, the commission will include that condition or alteration in its decision." Certainly, requesting the petitioner to recommence his petition according to an alternate method would be a significant alteration. However, the Commission is not limited to imposing minor alterations or conditions.³⁰ Indeed, the Commission may reconsider a prior boundary change if there was a "substantial procedural error in the original proceeding."³¹ The court sees no reason why the Commission could not, under 3 AAC 110.570(c)(1), correct an analogous procedural error, such as the choice of the wrong annexation method, before the boundary change becomes final.

b. The Commission's authority to proceed by legislative review also includes the authority to switch annexation methods.

²⁹ 3 AAC 110.440(c).

³⁰ See *LBC authority to detach an area from an organized borough*, OAG, File NO. 386-034-86, at *1-*2 (July 23, 1985)(concluding that the LBC could condition approval of detachment upon subsequent voter approval of incorporation of a new borough).

³¹ 3 AAC 110.580(e)(1).

The legislative review regulations reinforce the Commission's authority to change a petition's annexation method. 3 AAC 110.140 makes clear that *any* "territory that meets the annexation standards specified in 3AAC 110.090 – 3AAC 110.135 may be annexed to a city by the legislative review process," if the Commission determines that one of nine enumerated circumstances exists. The Commission's authority is *not* contingent on the petitioner having first specified a particular annexation method. Considered in light of the Commission's authority under *Valdez* and 3 AAC 110.440(c), 3 AAC 110.140 enables the Commission to switch a local action petition to one for legislative review if the petition is up to standards and falls within one of the nine circumstances. Here, the Commission did not even consider whether the requirements of 3 AAC 110.140 were met. Therefore, the Commission's conclusion that it could not convert the City's local action petitions to one for legislative review lacked a reasonable basis.

In fact, if the Commission had looked at 3 AAC 110.140(9) it would have found strong justification for proceeding by legislative review in Dillingham's case. 3 AAC 110.140(9) allows territory to be annexed by legislative review when "the commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state."³² Here, the petition violated the statute governing local action elections – set forth in AS 29.06.040 – because no voters (or people at all) resided in the territory to be annexed. Thus, the "specific policies set out in... AS 29.06" would unquestionably be served by proceeding by legislative review.

³² 3 AAC 110.140(9).

B. Indeed, the violation of AS 29.06.040 required the Commission to convert the petition to legislative review.

Because the petition could not satisfy the dual election provisions of AS 29.06.040, the city's choice to proceed by local action was improper, and the Commission abused its discretion in *not* requiring the petition to proceed by legislative review. Agency action taken without first complying with a statutory requirement is invalid.³³ As explained above, AS 29.06.040 provides that local action annexations are only valid if a majority of votes from both the annexing municipality *and* the territory to be annexed approve of the annexation.³⁴ Aggregating the votes from both areas is not allowed.³⁵ Here, it is uncontested that no one resides permanently in the annexed portion of Nushagak Bay.³⁶ A vote, certainly, was never held in that area. Thus, only one of the two statutorily required votes could even take place. Because compliance with the local action requirements was impossible, the local action annexation was invalid and the petition should have proceeded by legislative review.

Holding otherwise would permit the City to manipulate the local action process to require less public involvement, rather than more. Where both the annexor and annexe are populated areas, local action elections ensure that both areas support the annexation. However, where the territory to be annexed is unpopulated, proceeding by

³³ See *State v. Eluska*, 725 P.2d 514, 516 (Alaska 1986)(acknowledging that Board of Game's failure to regulate subsistence hunting may have been invalid, but finding it did not constitute a defense to unregulated hunting); *United State Smelting, Refining & Mining Co. v. LBC*, 489 P.2d 140, 141-142 (Alaska 1971)(finding LBC's approval of boundary change invalid where it had first failed to comply with statutory mandate).

³⁴ AS 29.06.040(c)(1)-(2).

³⁵ *Id.*; see also *Hearing on H.B. 133 Before the Senate Committee on Regional Affairs* 7 (May 1, 2006)(comments of Rep. John Coghill).

³⁶ To the extent that the Commission suggests that seasonal fishers may "populate" the bay (see e.g., Pub. Hearing Tr., at 320 (April 27, 2011)(comments of Chair Lynn Chrystal)), the court rejects this argument. Fishers do not spend enough time in the bay to establish residency for voting purposes, no procedures are in place to allow "residents" of Nushagak Bay to vote, and it is uncontested that no vote ever took place there.

local action avoids both the additional hearing required by the legislative review process and a meaningful election. This is exactly what happened here. The people whom the annexation would affect most seriously had inadequate opportunities for public comment, yet were also unable to vote.

C. Proceeding by local action violated the respondents' due process rights.

As explained above, the hearing requirements for annexation by local action differ from the hearing requirements for annexation by legislative review. Whereas a municipality wishing to annex by local action need not hold a hearing prior to submitting its petition to the Local Boundary Commission,³⁷ a pre-filing hearing is required for annexation by legislative review.³⁸ 3 AAC 110.425(a) provides that "*before* a petition for annexation by the legislative review process may be submitted to the department... [t]he prospective petitioner shall also conduct a public hearing on the annexation proposal" (emphasis added). Only after the hearing may the municipality file the petition with the Commission: the municipality must "submit evidence of compliance" with the hearing requirement along with its petition.³⁹

Here, the City chose to proceed by local action, so it did not hold a public hearing prior to filing the annexation petition.⁴⁰ Rather, the City merely placed copies of its proposed petition in three physical locations in Dillingham and on Dillingham's website, several weeks before filing the petition on July 2, 2010. It was not until late July that the city even provided copies of the petition to the villages.⁴¹ Written comments on the petition were allowed until October, 2010, but the only public hearing on the petition was

³⁷ 3 AAC 110.420

³⁸ 3 AAC 110.425(a).(d)-(e).

³⁹ 3 AAC 110.425(h).

⁴⁰ LBC Decision, at 1-2.

⁴¹ LBC Decision, at 3.

in Dillingham on April 25, 2011, almost ten months after filing and only a day before the Commission approved the petition.⁴² Thus, by the time local citizens were able to express their views on the petition, the petition had already been already finalized, and, indeed, the Commission was about to render its decision. The Commission itself was uneasy with the timing of the public comment period. As Commissioner Harcharak observed at the decisional meeting, "I believe [the people who testified from the villages] should have been contacted prior to filing this petition, when the petition was being considered and drafted. Because right now it seems to be after the fact, and my concern is that the impact that it's going to have on those communities... it's going to have a negative impact on every one of them."⁴³ Having found that the City should have proceeded by legislative review, the court concludes that the failure to hold a pre-filing hearing violated the respondents' due process rights.

a. The notice violation was substantial.

The lack of a pre-filing hearing was a substantial due process infringement because the villages were not able to contribute to (nor, indeed, were even aware of) the preparation of the annexation petition. "Failure to adequately inform and include the public in decision-making is a matter of public importance."⁴⁴ Here, the City failed to include the outlying villages in its decision to annex a huge swath of a shared resource. Even though the disposition of the bay affected village residents directly, they were denied a chance to have their suggestions incorporated into the petition. By the time of the April 25 hearing, the LBC had only blunt tools with which to modify the annexation: it

⁴² LBC Decision, at 3-4 (two informational meetings had been scheduled for January 2011, but they were cancelled due to inclement weather).

⁴³ Pub. Hearing Tr., at 170 (April 26, 2011).

⁴⁴ *Mullins v. LBC*, 226 P.3d 1012, 1018-1019 (Alaska 2010)(discussing *Lake and Peninsula Borough v. LBC*, 885 P.2d 1059 (Alaska 1994)).

could either reject the petition, or it could attach conditions to approval. However, as the Chair noted, the Commission could not impose the types of conditions – such as tax exemptions for local fishermen – that the respondents were requesting.⁴⁶ By contrast, earlier participation by the respondents and other affected individuals at a pre-filing hearing might have enabled the City, whose taxation authority is not so restricted, to have included such suggestions in the petition itself. Thus, the erroneous decision to allow the petition to proceed by local action substantially infringed on the ability of the respondents to participate in the annexation process.

The subsequent vote by Dillingham residents did not rectify the failure to hold a pre-filing hearing. As the transcript of the April 25-26 hearing makes clear, the people who objected most strongly to the annexation are not Dillingham residents, but residents of outlying communities who are now obliged to pay taxes to Dillingham. Because they are not Dillingham residents, they were not able to participate in the vote.⁴⁶ However, they would have been able to participate in the pre-filing hearing. Hearing attendance under 3 AAC 110.425(a) is not limited to residents of the municipality doing the annexation, and the hearing need not even be held in that municipality. Rather, the hearing may be held “within or near the boundaries proposed for annexation.” Thus, presumably, the City could have scheduled the hearing (or hearings) in one of the affected communities, further facilitating public participation.

b. The remedy for the notice violation is remand.

⁴⁶ Pub. Hearing Tr., at 339 (April 27, 2011).

⁴⁶ Ekuik itself has only two permanent residents, but neither party presented concrete evidence about where the summer residents live during the rest of the year.

Where a government entity provides deficient notice of proposed boundary changes, and the notice violations are substantial, the boundary change is invalid.⁴⁷ In *Lake and Peninsula Borough v. LBC*, the school district filed a local action incorporation petition proposing to change the boundaries of the Lake and Peninsula Borough. Although the choice of annexation method was proper, the district failed to notify villages whose subsistence hunting and fishing grounds would be excluded from the new Borough. Later telephonic hearings on the proposed changes did not include the villages.⁴⁸ Determining that these violations were substantial, the court remanded to the Local Boundary Commission to reconsider the boundary change after complying with the statutory notice requirements.⁴⁹ Here, too, the notice violations were substantial, so the annexation was invalid. Therefore, the court remands the petition and orders the Commission to direct refiling in accordance with the requirements for legislative review.

CONCLUSION

The court finds that the Commission abused its discretion in not requiring the City of Dillingham to process its annexation petition according to the legislative review method. Because proceeding by local action caused a substantial violation of the respondents' due process rights, the court VACATES the annexation and REMANDS to the Commission to process the petition by legislative review.

Signed this 21th day of March 2014 at Dillingham, Alaska.



Patricia Douglass

Patricia Douglass, Superior Court Judge

⁴⁷ *Mullins*, 226 P.3d at 1019 (finding that "public participation claims remain live and can be adjudicated where the public votes for adjudication"); *Lake and Peninsula Borough*, 885 P.2d at 1067.

⁴⁸ *Lake and Peninsula Borough*, 885 P.2d at 1060.

⁴⁹ *Lake and Peninsula Borough*, 885 P.2d at 1067.

I certify that on 3/27/2014 a copy of this document was sent/faxed to the attorneys of record or other.

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James Baldwin
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11/11/10 21121

City of Dillingham

Alaska House District 36

~ 3/28/14 ~

MARCH 2014 – LEGISLATIVE REPORT

28th Alaska State Legislature ~ 2nd Session

Cliff Stone and Ian Fisk / City Lobbyist's



As we cascade towards the end of session, I wanted to remind you of a couple of nuances that happen at this time of year. The Senate will soon vote on their version of the operating budget. Once it is adopted, they will send it back over to the House for concurrence. This never happens, so a conference committee will be appointed (3 members each) by the President and Speaker respectfully. Thus, the **24-hour rule** will be in effect. What is the **24-hour rule**?

The **24-hour rule** (see Uniform Rule 23(d) of the Alaska State Legislature) shortens the time frame in which most business gets done in the latter days of the session. It begins once a conference committee is appointed for the operating budget bill. It literally reduces the notification time required for meeting announcements of bill hearings to 24 hours (In contrast, 5 days is the normal for announcing a committee hearing on a particular bill). I might also add that 24 hours often slips to 8 – 10 hours as committees will announce something late in the day. We will remain vigilant on matters of importance on any particular bill that we're tracking.

You will not be able to always rely on the printed announcements or the announcements as posted on the BASIS website. The Senate is more casual, and sometimes, a committee chairman simply 'announces' meetings in a committee or on the Floor.

Even though most committees will slowly shut down the last week of session, the Rules and Finance Committees remain active, and basically, any committee can reopen at will. During the last actual 24 hours of the session, the **24-hour rule** gives way to simple momentary announcements by committee chairmen. Watching *Gavel Alaska* helps in that they often make those announcements on the Floor.



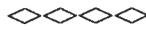
In another week or so, the activity at the committee and Floor level is accelerated to an often break neck pace. Floor action may begin in the morning and then for one reason or another, recess to a specific time or to the call of the presiding officer. They also do this as it comes down closer to the final days of session because the Rules Committee has to meet and give their blessing on the additional bills coming out of the various committees as they wrap up their work. This increased action prompts a **supplemental calendar**. A **supplemental calendar** is simply an additional calendar that is added for the respective Floor to consider in any given day. These calendar(s) are in addition to the one that was posted the day before.

Supplemental Calendars will also be posted on BASIS – <http://www.legis.state.ak.us/basis>, but it helps to use the TV or a webcast to compliment the website. According to Uniform Rule 18 of the Alaska State Legislature, it takes a two-thirds vote of the members present to take up a **supplemental calendar**. The **supplemental calendar** will particularly come into play the last couple days of session.

One of the websites I keep on my desktop the last few days is BASIS. Specifically the House and Senate Calendars so I can track which bills are being addressed by the Legislature for the day.

http://www.legis.state.ak.us/basis/h_s_calendars.asp?session=28

I can quickly hit the Refresh icon to see instantly the current status of any bill up that day.



GOVERNOR'S CORNER <http://gov.alaska.gov>

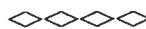
March 27, 2014 – The annual statewide *Choose Respect* rally was held statewide on this day. Governor Parnell and his wife Sandy planned to be in Valdez to lead that rally. Over 160 communities were signed up to participate in rallies and marches this year. This tradition started a few years ago to draw attention to the state’s “epidemic” of domestic violence and sexual assault.

March 25, 2014 – Governor Sean Parnell signed House Bill 71, legislation extending Alaska Regional Development Organizations, or ARDORs.

This bill extends the authorization of the ARDORs program, enabling local officials and businesses to pool their limited resources, work together on economic development projects, develop public and private partnerships, and provide technical assistance. There are 12 ARDORs across Alaska that focus on improving the economic health of their regions.

March 6, 2014 – Governor Sean Parnell nominated Simon Kinneen of Nome for consideration by the U.S. Secretary of Commerce for service on the North Pacific Fishery Management Council (NPFMC). The governor also named Ragnar Alstrom and John Moller as alternate nominees.

The NPFMC manages more than 900,000 square miles of ocean, and is responsible for managing halibut, cod, sole, and other groundfish in the Bering Sea, Gulf of Alaska, and Aleutian Islands waters. Established by the Magnuson-Stevens Fishery Conservation Act, the council is one of eight regional councils dedicated to the oversight of the nation’s fisheries. The Magnuson-Stevens Fishery Conservation Act, signed into law in 1976, empowers the U.S. Secretary of Commerce to choose the final appointee from applicants nominated by governors of coastal states.



BUDGET BILLS FY15

I’ve highlighted this section and will continue to do so during the session. It’s important to recognize these bills by their respective numbers as folks testifying in committee often refer to them by just their respective number. *These dates could shift a little bit. I will keep Rose alerted as to the correct date.

Capital FY15 Budgets – **HB 265 / SB 119** (Public testimony is scheduled for April 3, 4, 5)*

Operating FY15 Budgets – **HB 266 / SB 120** (A draft committee substitute was adopted by the Senate Finance Committee on March 27th on the House version for both this bill and **HB 267** below. Further amendments are scheduled to be taken up on March 28th)

Mental Health FY15 Budgets – **HB 267 / SB 121**

Supplemental **FY14** Budgets – **HB 299 / SB 155**

Amendments – The governor submitted amendments to his FY15 Budget as required by law on the 30th Legislative day. (February 19th)

Legislative Finance Website: <http://www.legfin.state.ak.us>

This link provides you with several options to view specifics for the Capital and Operating Budgets. If you click on Capital reports, you can then pull up projects by house district. Dillingham is under H. District 36.

Governor’s OMB **FY15** Proposed Budget Website:

<https://omb.alaska.gov/html/budget-report/fy-2015-budget/proposed.html>

Governor’s OMB **FY14** Enacted Budget Website:

<https://omb.alaska.gov/html/budget-report/fy-2014-budget/enacted.html>



BILLS OF INTEREST

(Introduced since the February Report)

What follows are bills that we’ve identified as having a potential or definite impact on your municipality or some bills that affect school funding in your community. Since this is the second session, bills introduced this late have very little chance of making it through the process. However, we will keep you apprised of any of these late introductions that seem to be “fast tracked.”

We would encourage you to look through all the bills and resolutions that have been introduced to alert us to any other pieces of legislation we should be tracking for you. If there is an interest, we would encourage you to read that bill and then if you have additional questions, we’ll be happy to get the answers for you. We will advise you as to when it might be beneficial to listen in or even testify on a particular bill. Rest assured we’ll continue to monitor all bills as sometimes during the legislative process, amendments come forward that then affect your interests in a bill that wasn’t even on anybody’s radar! All bills can be viewed at: <http://www.legis.state.ak.us/basis>

HOUSE BILLS

HB 372 / EXTEND EMERGING ENERGY TECHNOLOGY FUND



SENATE BILLS

SB 213 / MUNICIPAL ELECTION BOARDS



BILLS ON THE MOVE

The budget bills listed earlier in this report will be heard in their respective finance committees. I will notice them and alert Dillingham when there are public hearings scheduled and when they are headed to their respective FLOORS for a vote. (Note: Dillingham did present compelling testimony regarding the Operating Budget on March 21st)

Below are other pertinent bills we're tracking that have had hearings and/or Floor action during this past month. Note: Not all "Bills of Interest" will be listed, just those that seem to be moving along in the process and are of particular interest to Dillingham. I will continue to send email updates as warranted or even call City Manager Rose Loera if I think a particular bill deserves to be highlighted for your info and/or action. If you have any questions after reviewing any bill, please don't hesitate to ask us.

HOUSE ACTION

HJR 1 / Constitutional Amendment: Education Funding – Places the question on the ballot that would change the constitution and allow public funding to private and religious schools.

Current Status: Referred to the House Finance Committee on Feb. 28th. This resolution is not expected to receive any additional hearings, thus it will die at the end of this Legislature.

HB 19 / Permanent Motor Vehicle Registration – This bill passed out of the House on March 12th. It has been sitting in Senate State Affairs since March 14th. The original bill could have cost Dillingham \$12,000 a year in loss revenues by shifting certain vehicles to a permanent registration. As amended in the CS, it is no longer mandatory and can only be placed into affect if the community itself adopts a local ordinance to "opt-in" to this program.

HB 177 / Commercial Fishing Loans – Deals with interest rates on loans from the commercial fishing revolving loan fund and the community quota entity revolving loan fund. (Note: Rep. Edgmon sponsored this legislation. It has been in sitting in House Finance since Feb. 5th)

HB 199 / VPSO Firearms – This bill passed the House and was transmitted to the Senate on March 10th. The only committee of referral now is Senate Finance. It was scheduled to be heard March 27th, but has been delayed. (Note: This bill was also sponsored by Rep. Edgmon and has 26 House members signed on as co-sponsors. In addition, it has 12 members of the Senate signed on a cross sponsors.

HB 204 / Salmon & Herring Product Development Tax Credit – This bill passed the House on Feb. 14 unanimously. It has picked up 8 cross sponsors on the Senate side and currently resides in Senate Labor.

HB 321 / Charter Schools; Funding, Facilities – The Senate companion to this bill is SB 185. Like its Senate version an element of this bill would require a school district to convert an existing school to a charter school if a majority of parents supported the change. Both of these bills have a long way to go in the process and with so little time left, have little chance of succeeding. However, as stated below in the Senate version, different elements of this legislation could find its way into the current Education pieces that are moving.

SB 157 / Municipal Fire Protection Service Area Boundary Changes – If adopted by ordinance, the number of parcels of land in the service area can be decreased if the owner of the property requests removal and the increase or decrease in the number of parcels of land in the service area if the parcel is transferred to a service area that provides more accessible fire protection services to the transferred parcel. This bill passed the Senate and transmitted to the House on Feb. 24th. It was only referred to the Community & Regional Affairs Committee.

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## SENATE ACTION

**SJR 9 / Constitutional Amendment: Education Funding** – Places the question on the ballot that would change the constitution and allow public funding to private and religious schools.

Current Status: This bill was heard on the Senate Floor on March 10<sup>th</sup>. However, it was returned to Rules on March 12<sup>th</sup>. (As with HJR 1, the companion to this resolution, it requires a two-thirds vote by both bodies to pass. Currently they don't have the votes in the Senate or the House to achieve this.) *It is highly unlikely this resolution will come back before either body before the end of session.*

**SB 98 / VPSO Firearms** – This bill has had numerous committee hearings. Since both bills (Its companion is HB 199 – by Rep. Bryce Edgmon) are now in Senate Finance, the house bill will become the version that goes on to the governor, if indeed it is adopted and passed out by the Legislature.

**SB 123/ Prohibit Use of Cell Phone While Driving in School Zones/Property** – Authorizing a municipality to adopt such an ordinance. This bill passed the Senate on Feb. 14<sup>th</sup>. It was heard and passed out of the House Community & Regional Affairs Committee on March 27 and referred to Judiciary the next day.

**SB 147 / Base Student Allocation** – This would significantly increase the BSA for school districts. The new BSA would be \$6,084 vs. the current status of \$5,680. It would also provide for an annually adjusted BSA based on the Consumer Price Index. This bill received an additional Education Committee hearing on March 14<sup>th</sup>, but is unlikely to have much further action since any BSA increase will be part of another bill.

**SB 185 / Charter Schools; Funding, Facilities** – Although this bill was just heard and held on March 26<sup>th</sup>, it has to far to go to be considered seriously this session. As reported earlier, elements of these concepts may become part of another educational package that is progressing towards the finish line on April 20<sup>th</sup>.

**SB 208 / School Construction Bond Debt** – This bill is moving along slowly as it just passed out of Senate Education on March 24<sup>th</sup>. This bill may actually gain more traction in the few remaining days or the guts of it could find its way into one of the education bills that will become part of the adjournment package. In our analysis, it looks as if Dillingham would benefit from this legislation as currently drafted. When you pull up this bill, click on documents and then go to the item identified as 'Percent Local Share CIP FY2015.'

**HB 1 / Issuance of Drivers' Licenses** – This bill was just signed into law on March 26<sup>th</sup>. As reported before, this bill has not been without controversy. It is supposed to be limited in nature to people that might be in this country on a VISA of some kind or some other mechanism that allows them to be in the U.S. Instead of issuing a 5-year license, DMV is now required to issue the license for only the time spelled out in the immigrant's documentation. Some have argued that the DMV offices, particularly out in Bush Alaska will be overwhelmed by the consequences of this bill.

**HB 77 / Land Use/Water Rights/Disposal/Exchanges/Chikuminuk Lake Use** – We have been keeping Rose alerted as to the movement on this bill. It was finally heard in Senate Resources on March 10, 12, and 14<sup>th</sup> with public testimony still overwhelmingly against most elements of this bill. This despite the fact it had been rewritten during the interim. The Chikuminuk Lake language was struck from this bill in a Committee Substitute (CS) along with some other tweaks including new language regarding Chinook salmon.

We know there are several other amendments that might be forthcoming if this bill sees the light of day again, but it is our assessment that this bill has been poisoned beyond fixing. I don't believe it will get back to Rules out of Resources, but will certainly alert you as to any kind of movement. We are also watching other bills of similar nature to ensure that certain elements of HB 77 aren't transferred towards the language in other bills.

**HB 223 / Municipal Tax Exemption: Military Facility Zone** – This bill passed both bodies and is awaiting transmittal to the governor as of March 18<sup>th</sup>. This legislation authorizes municipalities to exempt or partially exempt for up to 10 years property in a military facility zone that creates or supports industry, development, or educational or training opportunities.

**HB 263 / Extend Senior Benefits Payment Program** – Extends this program until the year 2021. This bill has just one more committee of referral – that being Senate Finance before it goes to the Floor for a vote. It is expected to pass out and on its way to the governor before the end of this session.



## **COMMITTEE HEARINGS**

*If you are planning to testify on any particular bill or subject matter, it is a good idea to check the committee calendar the day of or the day before the scheduled hearing as sometimes a bill is rescheduled at the last minute. [http://www.legis.state.ak.us/basis/hearing\\_form.asp?session=28](http://www.legis.state.ak.us/basis/hearing_form.asp?session=28)*

Go to: <http://www.legis.state.ak.us/basis/start.asp> for a complete description of a bill that is up in committee, any fiscal notes, and also additional backup material that the legislative office has posted in regards to that particular bill. Remember – Bills that have already been heard or previous scheduled in committee can come back before that body without prior notification.

### **Live on the Web**

Most committee hearings can be seen and heard on Gavel Alaska. It is broadcast on both local access TV and on the Internet. You can also access online archives from the following website:  
[www.360north.org](http://www.360north.org)

### **Streaming Video**

Most committee hearings are also teleconference and available for viewing on the following website:  
<http://alaskalegislature.tv>

### **Testifying**

If you can't attend a hearing in person or at your local LIO you can participate by using the following numbers. It is always a good idea to check the committee schedule however to ascertain if they are accepting public testimony. In addition, be advised that the Legislature wants you to participate in the process, but the toll-free number can only be used if you have had prior approval to call in from the appropriate committee chair. We can assist you in obtaining that permission if needed.

The toll free number in Alaska: 1-855-463-5009. In Juneau: (907) 463-5009.



## NOTES

1. **February 28<sup>th</sup>** – Email to Rose alerting her to the dates set for public testimony on the Operating budget being conducted in House Finance (March 5, 2014).

After conferring, it was decided not to present any testimony here but wait and see what transpires and possibly be in a position to provide relevant testimony in the Senate regarding this budget and certainly the Capital budget.

2. **March 5/6<sup>th</sup>** – Emails and phone calls regarding three separate reappropriations for Dillingham.

There was a flurry of activity to ensure that both legislative offices had the correct information concerning Dillingham's intent on the reappropriations they wanted before the legislative deadlines for such action. We coordinated the exact language with staff at DEC that was necessary to ensure that Dillingham had the greatest flexibility to use this money and to ensure it met your intent. We then passed along the correct language to both legislative offices for insertion into the appropriate budget bill (more than likely the Capital budget). Once the CS for that bill is released, we will scrutinize the language that was inserted to ensure it still meets your intent and your approval and pass along such language to you for your final consent. All of this will have to be reconfirmed with both legislative offices.

3. **March 7<sup>th</sup>** – Email to Rose with attachments concerning SB 208/School Construction Bond Debt.

Passed along data regarding this bill and its intent. Basically it allows 14 different school districts (including Dillingham) around the state to have an option to fund a school project using debt, but treated as if it were cash through the Construction Grant Program. This would allow a "Local Share" in your community at a lower rate as explained to me, thus saving you and the district money in the long run.

4. **March 10<sup>th</sup>** – Email from Rose sharing with us AML's alert regarding possible legislation being considered by the Legislature to increase the PERS Employer Rate Cap from 22% to 24%.

We have been tracking the conversation in the Legislature concerning this idea. Nothing has surfaced so far, but we'll remain vigilant. A last minute bill or amendment to make this change could happen at the 11<sup>th</sup> hour. We have been attending weekly AML/Lobbyist meetings to coordinate our actions on an independent basis and in concert with AML. We'll keep you posted!

5. **March 21<sup>st</sup>** – We met deliberately with Rep. Edgmon and his staff to coordinate our actions for the last 30 days of session.

We also discussed your CIP list and the pending Capital budget. Realizing the budget constraints that all legislative offices were feeling, Rep. Edgmon prepared us for a fairly austere budget coming forth this year. We remain optimistic and will continue to work with him and Senator Gary Stevens on your priorities. We've had other conversations with members of the House and Senate leadership regarding these budgets and will continue to do so.

6. **March 21<sup>st</sup>** – Emails back and forth to Rose and Carol Shade to coordinate Carol's testimony to the full Senate Finance Committee regarding the Operating budget.

Mayor Ruby also had input as to the final draft of her testimony. Carol's testimony along with that of a couple of other communities given around the same time frame, were outstanding and made quite an impact. Even AML's director Kathie Wasserman made a positive comment about their testimony. Most of the statements focused on supporting the governor's idea of transferring \$3 billion into the PERS/TRS pension liability trust and the proposed cuts to Revenue Sharing.



## IMPORTANT DATES / DEADLINES

**March 31<sup>st</sup>** / Alaska Permanent Fund Dividend (PFD) Deadline - Apply online at: [www.pfd.state.ak.us](http://www.pfd.state.ak.us)

**April 3, 4, 5<sup>th</sup>\*** – Senate Finance Committee will be conducting Public Testimony on the Capital Budget.

\*These dates are not set in stone and could shift around by a couple of days.

**April 11<sup>th</sup>** – The full Legislature is scheduled to meet in joint session to confirm the governor's appointments to his cabinet or boards/commissions.

**April 20<sup>th</sup>** is the 90<sup>th</sup> day and thus, the last day of the regular session by statute. (121 days in the Alaska Constitution) 90-day sessions began in 2008.

- (A session can be “extended” one time for 10 days if approved with a 2/3<sup>rd</sup> vote by both body's – House and Senate. 30 Special Sessions can be called by the Governor or the Legislature. Again, a 2/3<sup>rd</sup> vote is required of each body if considered by the legislature.)

### Governor's Deadlines once a bill has been transmitted

Fifteen days, Sundays excluded, to act on a bill if the Legislature is in session.

If the Legislature has adjourned, the Governor has twenty days, excluding Sundays.



## WEBSITES OF INTEREST

2014 2<sup>nd</sup> Session Legislator & Staff Contact List:

[http://w3.legis.state.ak.us/docs/pdf/session\\_phone\\_list.pdf](http://w3.legis.state.ak.us/docs/pdf/session_phone_list.pdf)

House & Senate Committees: <http://w3.legis.state.ak.us/docs/pdf/commlist.pdf>

House Finance Sub-committee Members: <http://w3.legis.state.ak.us/docs/pdf/HFINSubcmte.pdf>

Senate Finance Sub-committee Members: <http://w3.legis.state.ak.us/docs/pdf/SFINSubcmte.pdf>

The full Legislative Publications List is at: <http://w3.legis.state.ak.us/pubs/pubs.php>

Congressional Delegation websites –

<http://murkowski.senate.gov/public>

<http://www.begich.senate.gov/public>

<http://donyoung.house.gov>



*Thank you for the trust you have placed in us.*

*~ Cliff and Ian*

~ End Report ~