

**ALASKA COMMERCIAL FISHERMEN'S MEMORIAL IN JUNEAU**

P. O. Box 20092  
Juneau, Alaska 99802  
(907) 723 4725

December 3, 2013

DNR Division of Mining, Land and Water  
400 Willoughby Ave  
Box 111020  
Juneau, Alaska 99811-1020

DEPT. OF NATURAL RESOURCES  
DIV. OF MINING, LAND & WATER  
2013 DEC -4 AM 10:17  
SE REGIONAL OFFICE

**Re: Public Comment on DNR's Preliminary Decision ADL 108124,  
Proposed Conveyance to the City and Borough of Juneau Pertaining to  
Submerged Land in Gastineau Channel For the Development of Two  
Offshore Cruise Ship Berths (Proposed Decision)**

Dear DNR:

I write on behalf of the Alaska Commercial Fishermen's Memorial in Juneau (Memorial). The Memorial is an Alaska nonprofit corporation. The Memorial has owned a granite memorial (referred to in these comments as memorial, with a small "m") adjacent to and between the Mount Roberts Tram and Taku Fisheries along the Juneau, Alaska ("City") waterfront for decades.

Please accept this letter as our comments on the proposed conveyance submerged lands to the City and DNR's Preliminary Decision ("Proposed Decision") in order for the City to develop two massive, multi-million dollar cruise ship docks directly in front of the memorial, harming the purposes and important historic role that the memorial has along the City's waterfront, and harming and preventing the public's access to the navigable waters and submerged lands of Gastineau Channel.

**I. SUMMARY OF COMMENTS**

DNR should withdraw its Proposed Decision and not convey submerged lands to the City for the construction of two cruise ship docks directly in front of

**ATTACHMENT 1A**

the memorial. Alternatively, DNR's Proposed Decision should be remanded to the City before DNR makes any final decision. A remand will allow further development of the record before DNR and a better discussion of impacts we discuss here, that the City has not divulged to DNR. The City has, by act or omission, failed to provide DNR with all relevant information concerning the impacts of the proposed docks on the citizens of Juneau. As a result of the City's failure to provide DNR with all relevant information of the impacts of the proposed docks that the City proposes to construct in front of the memorial, DNR's Proposed Decision is woefully inadequate as a matter of law. The City has violated its own Waterfront Plan in seeking a transfer of state submerged lands from DNR for construction of those docks in front of the memorial. The City has not been forthcoming with DNR or the public on the City's failure to obtain the submerged lands before proceeding with the cruise docks project. The City is rushing headlong to construct these docks to the detriment of the public process, and the ability of the affected publics to advise both the public at large and agencies like DNR of the impacts and problems associated with these docks. Neither DNR nor the City considered the negative impacts on the health, safety, and welfare of the public as those impacts relate to the memorial. DNR's Proposed Decision only considered a limited number of alternatives to the City's desire to construct these docks, instead of a broader range of other reasonable and cost-effective alternatives. The only two alternatives that DNR considered ignore possible solutions to the legal and practical problems that the City's docks pose. DNR's failure to deal with the serious issues raised in these comments will render any decision by DNR to issue submerged lands to the City arbitrary, capricious, and an abuse of DNR's discretion. DNR's Proposed Decision, on the whole with respect to the memorial and the impacts that the City's docks will have on the Memorial is without a rational explanation, inexplicably departed from established policies, or rests on an impermissible basis. If DNR finalizes its Proposed Decision, DNR will violate state law and the Alaska Constitution's public trust requirements. If DNR finalizes its Proposed Decision, it will constitute a taking of private property and the Memorial should be paid damages caused by the state and its Proposed Decision.

## **II. ALASKA COMMERCIAL FISHERMEN'S MEMORIAL**

The basic mission of the Memorial is two-fold. First, the Memorial engraves on the memorial, and honors, the names of commercial fishermen and women who have died. Second, the Memorial sponsors the annual Blessing of the Fleet and Dedication of Names (Blessing) each year on the first Saturday in May

at 10 am. The Memorial has been in existence since 1993, but it informally has sponsored the Blessing and fulfilled this mission for almost 25 years. When the Memorial sponsored the first Blessing, there was a ferry terminal along the Juneau waterfront and ferries still used downtown Juneau as a port of call, in addition to Auke Bay. Additional information on the memorial and the Blessing (which is incorporated into this comment by reference) can be found at <http://www.juneau.org/engineering/memorial/>.

The memorial was constructed where it is because (1) it is on the waterfront in the locus of the City's historic fishing activities; (2) it provides a permanent location as an interpretative, educational site for an important part of Juneau's history; (3) it demonstrates the City's support for commercial fishing and provides information on the costs and benefits of commercial fishing; (4) it provides a place for quiet reflection and remembrance for friends and family of deceased fishermen and women; (5) it is the location of the annual Dedication of Names and Blessing of the Fleet when boats "parade" past the memorial afloat the navigable waters of Gastineau Channel; and (6) the memorial has open access to an unobstructed view over the deep waters and submerged lands of Gastineau Channel so family and friends can reflect on their lost loved ones. Many of the names engraved on the memorial are those who have been lost at sea. Thus, the memorial serves as the only "graveyard" that these families have to mourn their loss.

The Blessing and Dedication is an annual event that is now known nationally. Families and friends of fishermen and women from around the country have paid to engrave names on the memorial and participate in the annual Blessing and Dedication of Names.

A community event has grown up around the annual Blessing. The Twisted Fish restaurant adjacent to the memorial now hosts a free brunch after the Blessing, and this provides an opportunity for community bonding with the commercial fishing industry's participants. Visitors, fishermen and women, and locals know where the Memorial is and can visit it. Finally, the mission of the memorial is engraved on a large bronze plaque facing the uplands:

The purpose of this Memorial is to demonstrate support for the commercial fishing industry by individuals, families, and businesses; to salute the economic and social importance of that industry within the State of Alaska; to remember those commercial fishermen and women who have died; to provide

a quiet place for remembrance and reflection; and to serve as a location for the annual Blessing of the Commercial Fishing Fleet on the first Saturday morning in May.

### **III. DOCK PROJECT AT ISSUE IN THE PROPOSED DECISION**

The City proposes to construct two massive cruise ship docks along the City's waterfront. One of these two new docks that the City wants to construct on the state's submerged lands would permanently impair the City's waterfront and the navigable waters in Gastineau Channel in front of the memorial, prevent the annual Blessing as it has been conducted historically, and shut off the memorial's unobstructed access to the marine waters of Gastineau Channel.

Except for a difficult to apprehend or appreciate "birds-eye" view of the two docks that shows the docks as tiny lines (Proposed Decision, Attachment B and G), the City has not forthrightly disclosed the massive size, height, and girth of the docks that the City proposes to construct in front of the memorial. The City has not actually portrayed to the public or DNR what the docks would look like if they were constructed as proposed in front of the memorial. Attachment 1 to this letter shows an artist's rendering of the proposed dock in front of the memorial. It will be a massive wall. The City's dock directly in front of the memorial will thwart the purposes of the Memorial and it will not allow the Memorial to safely sponsor the annual Blessing because the dock in front of the memorial poses a navigational danger and safety threat to fishing boats that have historically participated in the Blessing.

The City's proposed cruise ship docks in front of the memorial will divorce the Blessing from the Dedication of Names, which are two integral parts of a single, annual ceremony. In DNR's Proposed Decision, there is only a single reference to the word "memorial." Proposed Decision page 8. Only a single sentence discusses the memorial and Blessing of the Fleet. Proposed Decision page 8. There is absolutely no mention in DNR's Proposed Decision of the impacts to the memorial or the Blessing from the City's proposed project, except to dismiss concerns. Proposed Decision page 8.

#### IV. LEGAL AND POLICY FAILURES IN DNR'S PROPOSED DECISION

##### 1. DNR's Proposed Decision Violates Alaska Law

DNR's Proposed Decision refers to AS 38.05.825(a). DNR writes that this statute "requires DMLW to convey to CBJ tide and submerged lands suitable for occupation and development when requested by CBJ providing that the following requirements are met: "(2) the use would not unreasonably interfere with navigation or public access ... ."

In a very conclusion-oriented approach without any analysis of this legal requirement, DNR writes:

However, CBJ has modified its project to accommodate vessels needing access to the Taku Fisheries Dock or to the Fishermen's Memorial during the Blessing of the Fleet. Thus, DMLW finds that the second required listed above has been fulfilled and that the use will not unreasonably interfere with navigation.

Proposed Decision page 8.

The notion in this very small part of DNR's Proposed Decision is that the City's docks have been modified to accommodate vessels during the Blessing. That seems to have been invented out of whole cloth, or else DNR simply took whatever it is the City submitted to it as gospel to arrive at a conclusion that the City's docks will not unreasonably interfere with navigation. This is the epitome of DNR developing its Proposed Decision without any rationale, explanation, and thus renders the Proposed Decision arbitrary, capricious, and an abuse of DNR's discretion.

DNR's conclusion is not only completely arbitrary and is not based on any information or analysis, it is also wrong. The City did not modify the dock project to accommodate fishing vessels to afford them safe access to the memorial during the Blessing. Just the opposite is the case.

The City's dock project directly blocks access to the memorial during the Blessing. There is no basis at all in anything DNR writes in its Proposed Decision

that the City's docks "will not unreasonably interfere with navigation." As examined in more detail in these comments, the City's dock and DNR's Proposed Decision if finalized is arbitrary and an abuse of discretion and violates AS 38.05.825(a)(2)'s requirement because the use of the submerged lands for the City's docks would "unreasonably interfere with navigation or public access" to the memorial and the Blessing.

DNR does not apprehend that a stream of fishing boats participate in a parade past the memorial during the Blessing. More often than not this boat parade includes the Alaska marine highway ferry, coast guard vessels, sailboats, and recreational craft that also participate in the Blessing. Photos of the boats as they move past the memorial during the Blessing, in the open unobstructed waters over the submerged lands of Gastineau Channel are shown at this website: <http://www.juneau.org/engineering/memorial/memorial2008/album/index.html>.

It is important to emphasize for DNR's and the City's benefit that the memorial was located where it is because it was the last piece of open land along the downtown Juneau waterfront. It is located near the City's historic commercial fishing activities. The memorial was constructed where it is after extensive polling of commercial fishermen and women and after working with private property owners and the City on the location and construction. The memorial was constructed of imported granite and was located on a piece of waterfront that had an unobstructed view and access to the marine waters of Gastineau Channel. DNR's Proposed Decision, if finalized, will destroy all of that.

**2. DNR's Proposed Decision Fails to Identify the Negative Impacts that Transferring Submerged Lands to the City will have on the Memorial**

The dock that the City proposes to construct on the submerged lands in front of the memorial will block the passage of boats that are part of the Blessing. The dangers posed by the City's proposed docks to boats participating in the Blessing have not been discussed or analyzed at all by the City, nor has the City conducted any risk analysis of a stream of fishing boats navigating past, in, and around its proposed docks during the Blessing. The issue of the dangers and safety hazards posed by the City's proposed docks is real and well-known by fishermen, but neither identified by the City, nor discussed by DNR in its Proposed Decision.

**3. Transferring Submerged Lands in Gastineau Channel to the City for a Dock in Front of the memorial will Result in Dangerous Conditions and Safety Risks to the Public**

Bernie Osborne is a Juneau commercial fisherman who has commercially fished for almost 50 years. He has participated in the annual Blessing every year since before 1993. Attachment 2. Mr. Osborne notes that his boat and other boats participating in the Blessing move from right to left in front of the memorial during the blessing, after a fishing boat drops a wreath in front of the memorial. Attachment 2.

Mr. Osborne indicates that City's configuration of the dock in front of the memorial will not allow fishing boats to safely pass in front of the memorial for the Blessing. He writes that while there is an open cul de sac area of water in front of the memorial between the new proposed dock and shore, the entire dock configuration poses hazards to navigation to boats like his that have participated in the Blessing. Attachment 2.

Even without this big dock the City plans to build, the ocean's current moves by this area very fast and it is very tricky to maneuver. "The new dock's configuration and the currents, coupled with winds and waves that often occur in Gastineau Channel, will make it impossible to have a boat parade for a Blessing." Attachment 2. Mr. Osborne will not participate in a Blessing anymore for safety reasons if the City constructs its new dock in front of the memorial because the new dock will put his boat and crew at risk if is constructed in front of the memorial. Attachment 2.

In light of this information, DNR cannot finalize its Proposed Decision. We have not seen what the City submitted to DNR as part of its late efforts to obtain submerged lands in front of the memorial. However, we assume the above discussion of the impacts of transferring the submerged lands in Gastineau Channel in front of the memorial to the City were not identified, discussed, or even investigated by the City in its application for the submerged lands in front of the memorial. If DNR does not remand this matter to the City for additional analysis and public input, or if DNR finalizes its Proposed Decision, DNR's final decision on this matter will be both legally and factually infirm.

**V. LEGAL PROBLEMS WITH DNR'S PROPOSED DECISION AND  
LEGAL BASIS FOR NOT FINALIZING DNR'S PROPOSED DECISION**

**1. A Transfer of the Submerged Lands to the City for Docks in  
Front of the Memorial Violates Article VIII, Section 14 of  
Alaska's Constitution**

Article VIII, section 14 of Alaska's Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." Open access to the state's public, navigable waters cannot be denied any citizen except as limited by beneficial uses or public purposes.

DNR's Proposed Decision would allow the City to construct a massive dock in front of the memorial, a memorial that relies on the state's public navigable waters, and the submerged lands that have allowed open, unobstructed views and access between the memorial and the waters of Gastineau Channel. DNR's Proposed Decision would deny constitutional rights that the memorial and its constituencies have as citizens of Alaska.

The "provisions in Article VIII [of Alaska's Constitution] were intended to permit the broadest possible access to and use of state waters by the general public." Wernberg v. State, 516 P. 2d 1191, 1198-99 (Alaska 1973). The Alaska legislature broadly defines the navigable and public waters available for public use in AS 38.05.965. Specifically, AS 38.05.965(18) defines "public water" to mean:

navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

The memorial has a public interest in open, safe waters of Gastineau Channel in front of the memorial for its Blessing and for its purposes of reflection and dedication of names. The memorial has an interest in the public waters of Gastineau Channel and that public interest is impaired by DNR's Proposed Decision and the City's two docks constructed in front of the memorial.

Conveying the submerged lands in front of the memorial to the City would violate Alaska's Constitution.

**2. Transferring Submerged Lands to the City for Docks in Front of the Memorial Violates Alaska Law**

The legislature broadly interpreted the protections that the Public Trust Doctrine in Article VIII offers its citizens when it found as follows (Sec. 1, Ch. 82, SLA 1985) (emphasis added):

Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.

This language means that DNR must thoroughly consider the public trust ramifications of its Proposed Decision, especially when disposal is concerned. Contrary to this legislative admonition, DNR's Proposed Decision gives the City the exclusive right to the submerged lands in front of the memorial to the detriment of the memorial's rights and interests.

The Public Trust Doctrine is intended to safeguard against poorly considered disposals of public resources, as would happen here if DNR finalizes its Proposed Decision.

Contrary to the legislature's directive cited above, transferring ownership of the navigable, public waters in front of the memorial to the City to construct its docks would grant an exclusive right to the City to use the waters in front of the memorial exclusively for dock purposes. DNR's Proposed Decision would terminate the right of the public to use those waters for the Blessing, and it DNR's Proposed Decision would terminate the mission and purposes of the Memorial.

The Proposed Decision would deny access of the public to the Blessing and vice versa by preventing a parade of boats in now-open waters of Gastineau Channel during the annual Blessing. These are all important "other public purposes for which the water is used or capable of being used."

DNR also violates AS 38.05.825 if it conveys the submerged lands to the City for a dock in front of the memorial. AS 38.05.825 deals with the conveyance of submerged land to municipalities and provides in relevant part (emphasis added) as follows:

(a) Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the ...

(2) use of the land would not unreasonably interfere with navigation or public access ...

(5) land is classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department ... .

The Proposed Decision violates the law because the City's proposed use of the submerged lands would unreasonably interfere with navigation or public access. In addition, the transfer of submerged lands that the City seeks for its docks in front of the memorial is inconsistent and incompatible with the important uses already identified by the City to promote the memorial for several reasons.

### **3. Transferring Submerged Lands to the City for Docks in Front of the Memorial Violates the Juneau State Land Plan**

The memorial and Blessing provide both land and water space for uses and activities that are directly related to maritime activities. This is identical to what the Juneau State Land Plan (JSLP) provides as quoted by DNR (Proposed Decision page 5) (emphasis added):

The JSLP states that the plan's intent related to Subunit 6a8 is as follows: '[T]o provide both land and water space for uses and activities which are directly related to maritime activities while minimizing significant adverse impacts on habitat and harvest for which these subunits are co-designated. Maritime

activities include private boating of all types, tourism ... commercial fishing ... and any other activities involving the human use of waterbodies for sport, recreation, or commerce.'

The City's proposed docks in front of the memorial are a new, proposed activity that will seriously and negatively affect the memorial and the blessing, and existing, historic maritime activities on the City's waterfront. The City's proposed docks in front of the memorial will do the opposite of what is quoted from the JSLP by DNR: the City's docks will maximize significant adverse impacts on maritime activities associated with the memorial and the Blessing, which are important human uses of the Gastineau Channel water body.

**4. Transferring Submerged Lands to the City for Docks in Front of the Memorial Violates the City's Waterfront Plan**

The proposed use of the submerged lands by the City is inconsistent and incompatible with the City's own Waterfront Plan. The City's 2003 Waterfront Master Plan identifies the memorial as an "Important public art and/ or cultural icon." 2003 Long Range Waterfront Master Plan for the City and Borough of Juneau page 27 (Nov. 22, 2004) (Attachment 3). The Proposed Decision would transfer submerged lands to the City's for a proposed dock in front of the memorial that will destroy the memorial as an historic part of the City's waterfront, and an important public art and/or cultural icon.

**5. Transferring Submerged Lands to the City for Docks in Front of the Memorial Violates Long-Standing City Policies Supporting the Fishermen's Memorial**

The Proposed Decision violates the letter and spirit of long-held City policies on the memorial and its importance. In 1993, the City Assembly unanimously adopted a resolution (Attachment 4) that reads in part:

WHEREAS, a commercial fishermen's memorial along the Juneau waterfront would honor those commercial fishermen in Juneau who have perished in pursuit of their occupation, would demonstrate the good will of the people of the City and Borough of Juneau towards the commercial fish industry in Juneau, and would express the community's appreciate for

the commercial fishing industry and its contributions to the local citizenry, economy, and community, and

WHEREAS, a commercial fishermen's memorial would provide a focal point for family, friends, and other wishing to place flowers, wreaths, poems, and other suitable personal memorials, and would provide a non-denominational site for an annual celebration of commercial fishermen and a blessing of the fleet, and

WHEREAS, a commercial fishermen's memorial would provide a testament to the courage and dedication of Juneau's commercial fishermen who work in this country's most dangerous occupation, and a testament to the City and Borough of Juneau's support and concern for commercial fishermen who line, work, and play in the City and Borough of Juneau and who make a positive contribution to Juneau through their strength courage, and residence here, and

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

1. That the Assembly strongly supports the Juneau Commercial Fishermen Memorial Committee's efforts to design, construct, and dedicate a commercial fishermen's memorial along the Juneau waterfront. ...

That 1993 City Assembly resolution supporting the memorial and the Blessing followed a May 1993 Resolution of the City's Fisheries Development Committee that, among other things, "strongly supports the Juneau Commercial Fishermen Memorial Committee's efforts to design, construct, and dedicate a commercial fishermen's memorial along the Juneau waterfront." Attachment 5.

In 1994, the City Assembly was even more supportive of the memorial and specific about its policy toward the memorial. In Resolution 1734 adopted unanimously by the City and signed by then-mayor Byron Mallott on November 14, 1994 (Attachment 6), the City Assembly, on behalf of all the City's residents, resolved (emphasis added):

1. The Assembly supports the proposed site and design of the Juneau Commercial Fishermen's Memorial as an appropriate use and development of the downtown shoreline.
2. The Assembly regards the project as a worthy and noble effort deserving the support of any Juneau resident, organization or corporation having an interest in commercial fishing and an appreciation for those who have lost their lives in the pursuit thereof.
3. The manger is authorized and directed to modify the city and borough easement with Franklin Street Property to include the memorial as an allowable use under the terms of the easement, and to provide such other support and assistance as may be useful and practicable.

Finally, the City adopted an ordinance in 1996 that loaned the Memorial \$94 thousand to help the Memorial complete construction of the memorial. Attachment 7. That City action further demonstrated tangible, broad-based, community support for the memorial as an important part of the waterfront to fulfill the Memorial's mission. The memorial was so important to the City that then-Mayor Dennis Egan said that the memorial "should have been a city project" and that the "City should have been involved from the get-go." Attachment 8.

If DNR finalizes the Proposed Decision, DNR will thwart the laws, policies, and long-time direction of the City. It will destroy the City's support of the Memorial, which has reached back into the City's history farther than any dock project, and long before the City even had a Docks and Harbors Department which now promotes its docks and desires the submerged lands in front of the memorial for its large, obstructing docks.

**6. The City Failed to Provide the Public with Notice of its Need to Obtain a Transfer of the Submerged Lands for Docks in Front of the Memorial**

Nevertheless, DNR's Proposed Decision does not reflect any of this history described above. That may be because the entity that is pushing so strongly for the construction of the dock in front of the memorial appears to be the City's

Docks and Harbors Department. That sub-entity of the City does not reflect the public's views. And, while we have not seen what the City submitted to DNR in order to get attempt to obtain the submerged lands in front of the memorial to build the docks, it is possible that the City's submission to DNR related to its desire to have the submerged lands at issue here does not disclose much, or anything, about the memorial and its long-held importance to the City and the memorial's need for unimpeded open access to the navigable waters and submerged lands of Gastineau Channel.

DNR writes in its Proposed Decision at page 8: "To-date, DMLW has not received any comments from the public or agencies concerning the State's public interest in retaining the requested parcel." This is a curious statement at best, and a too obtuse reference to the idea that the public did not comment on the City's claim for the submerged lands in Gastineau Channel to build the docks in front of the memorial. DNR apparently assumes that the public knew about what the City was up to in trying to claim the submerged lands before the City and Borough of Juneau's Assembly was even aware of it and before the citizens of the City were aware of it and before the Memorial was aware of it.

The Memorial (perhaps like the Assembly and the public) didn't even know that the City needed submerged lands in front of the memorial for the City's proposed docks until it was reported on KTOO radio on November 12, 2013. <http://www.ktoo.org/2013/11/12/juneau-moves-forward-with-new-cruise-docks-despite-not-owning-submerged-land/>.

DNR's Proposed Decision was not posted on the internet and available for review and comment until November 7, 2013. How could the public have possibly commented on something that was not available to comment on before it became available to the public? Notwithstanding that query, even the City, which proposed the 16B docks, didn't know that DNR "needed to have a public comment period in order to transfer nearly 18 acres of submerged tideland to the City for its new cruise ship docks." <http://www.ktoo.org/2013/11/13/port-officials-grilled-over-cruise-ship-dock-project/>.

But it is the substance of the issue that is of real importance to the public, not the number of comments that DNR didn't receive before DNR's Proposed Decision was available to comment upon. It is the nature and substance of the comments submitted after November 7, and before the deadline for submitting

public comments on December 9, 2013, that must be considered by DNR, not what the public didn't submit before November 7. Proposed Decision page 12.

**7. Neither the City nor DNR Assessed the Dangers of the New Docks to Small Fishing Boats Participating in the Blessing of the Fleet or the Impact of the New Docks on the Blessing**

In a heading called Navigation (Proposed Decision, page 8), DNR writes that the "City modified its project to accommodate vessels needing access ... to the Fishermen's Memorial during the Blessing of the Fleet." That is absolutely incorrect and it appears that DNR may have simply mimicked language given it by the City. This issue has been discussed in more detail above.

**8. DNR Failed to Identify a Reasonable Range of Alternates in its Proposed Decision**

DNR's Proposed Decision is inadequate and arbitrary as a matter of law because the Proposed Decision only considers two alternatives (Proposed Decision page 8). Alternative one is approve the submerged land conveyance. That is suggested without discussing or attempting to mitigate all the problems discussed above. Alternative two is to deny the conveyance.

In presenting only two, "either-or, black or white" alternatives, DNR has completely failed to identify other reasonable alternatives that the City and DNR should have explored, identified, or analyzed. This is not to say that the range of reasonably available alternatives must be so numerous as to be impractical, but the failure of DNR or the City to consider or discuss reasonable thought alternates in some sort of a brainstorming or public process that approaches thoughtfulness is glaringly obvious. Among the reasonable alternatives that DNR fails to consider or identify are:

- moving one of the docks the City proposes from in front of the memorial to avoid conflicts with the memorial, or
- remanding the City's request for the state's submerged lands back to the City for it to consider the important public art and/or cultural icon that is the memorial and deal with it on a local basis so DNR does not have to sort out those kinds of issues, or

- moving the memorial to avoid conflicts with the City's docks, or
- investing in improvements to the existing dock structures in the City to assure their viability and efficient operation and maintenance as soon as possible. This was suggested to the City in November 2009 by the Alaska Cruise Association. Attachment 9.

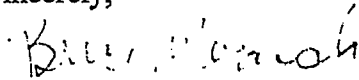
The Proposed Decision is arbitrary and an abuse of discretion because it fails to identify or discuss a reasonable range of alternatives to transferring the submerged lands to the City on front of the memorial for the City's docks.

## **CONCLUSIONS**

DNR should withdraw its Proposed Decision and not convey submerged lands to the City for the construction of two cruise ship docks directly in front of the memorial. Alternatively, DNR's Proposed Decision should be remanded to the City before DNR makes any final decision. A remand will allow further development of the record before DNR and a better discussion of impacts we discuss here, that the City has not divulged to DNR. The City has, by act or omission, failed to provide DNR with all relevant information concerning the impacts of the proposed docks on the citizens of Juneau. As a result of the City's failure to provide DNR with all relevant information of the impacts of the proposed docks that the City proposes to construct in front of the memorial, DNR's Proposed Decision is woefully inadequate as a matter of law. The City has violated its own Waterfront Plan in seeking a transfer of state submerged lands from DNR for construction of those docks in front of the memorial. The City has not been forthcoming with DNR or the public on the City's failure to obtain the submerged lands before proceeding with the cruise docks project. The City is rushing headlong to construct these docks to the detriment of the public process, and the ability of the affected publics to advise both the public at large and agencies like DNR of the impacts and problems associated with these docks. Neither DNR nor the City considered the negative impacts on the health, safety, and welfare of the public as those impacts relate to the memorial. DNR's Proposed Decision only considered a limited number of alternatives to the City's desire to construct these docks, instead of a broader range of other reasonable and cost-effective alternatives. The only two alternatives that DNR considered ignore

possible solutions to the legal and practical problems that the City's docks pose. DNR's failure to deal with the serious issues raised in these comments will render any decision by DNR to issue submerged lands to the City arbitrary, capricious, and an abuse of DNR's discretion. DNR's Proposed Decision, on the whole with respect to the memorial and the impacts that the City's docks will have on the Memorial is without a rational explanation, inexplicably departed from established policies, or rests on an impermissible basis. If DNR finalizes its Proposed Decision, DNR will violate state law and the Alaska Constitution's public trust requirements. If DNR finalizes its Proposed Decision, it will constitute a taking of private property and the Memorial should be paid damages caused by the state and its Proposed Decision.

Sincerely,



Bruce B. Weyhrauch

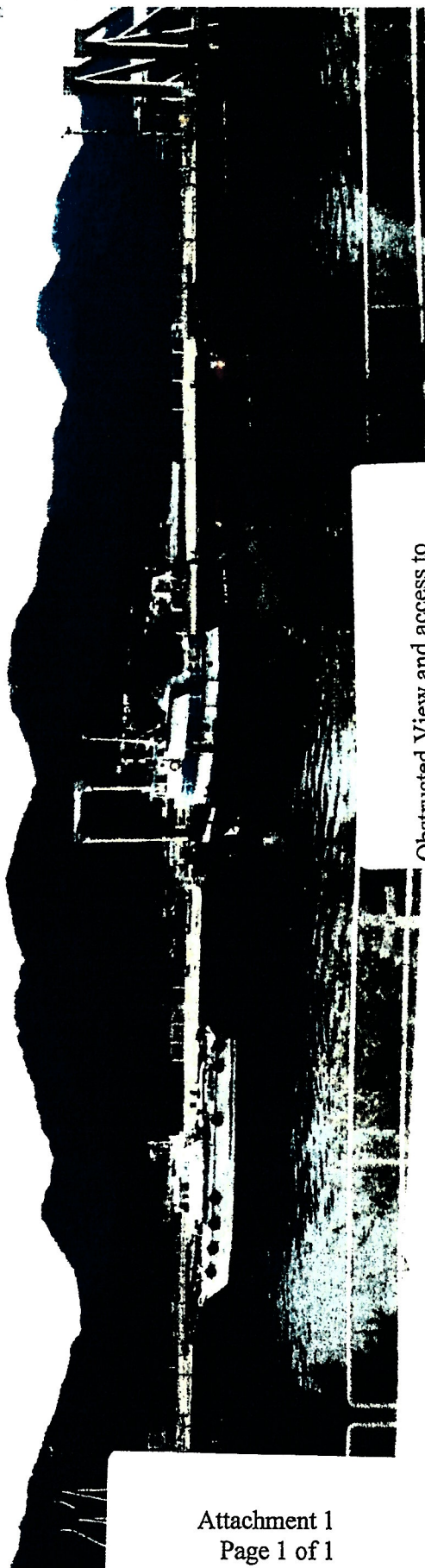
President, Alaska Commercial Fishermen's Memorial in Juneau

Attachments:

1. Artist's rendering of the City's proposed dock in front of the memorial
2. Statement of Arthur Osborne (Nov. 27, 2013)
3. 2003 Long Range Waterfront Master Plan for the City and Borough of Juneau (Nov. 22, 2004) (portion)
4. City & Borough of Juneau, Alaska Assembly Resolution Number 1649 (June 7, 1993)
5. City & Borough of Juneau, Alaska Fisheries Development Committee Resolution (May 25, 1993)
6. City & Borough of Juneau, Alaska Assembly Resolution Number 1734 (Nov. 14, 1994)
7. City & Borough of Juneau, Alaska Assembly Ordinance Number 96-17 (C) (Aug. 15, 1996)
8. Article in the Juneau Empire, page 3, (July 10, 1996)
9. Alaska Cruise Association letter to City and Borough of Juneau's Port Director (Nov. 4, 2009)



2013 View to Gastineau Channel at  
memorial before City's Dock



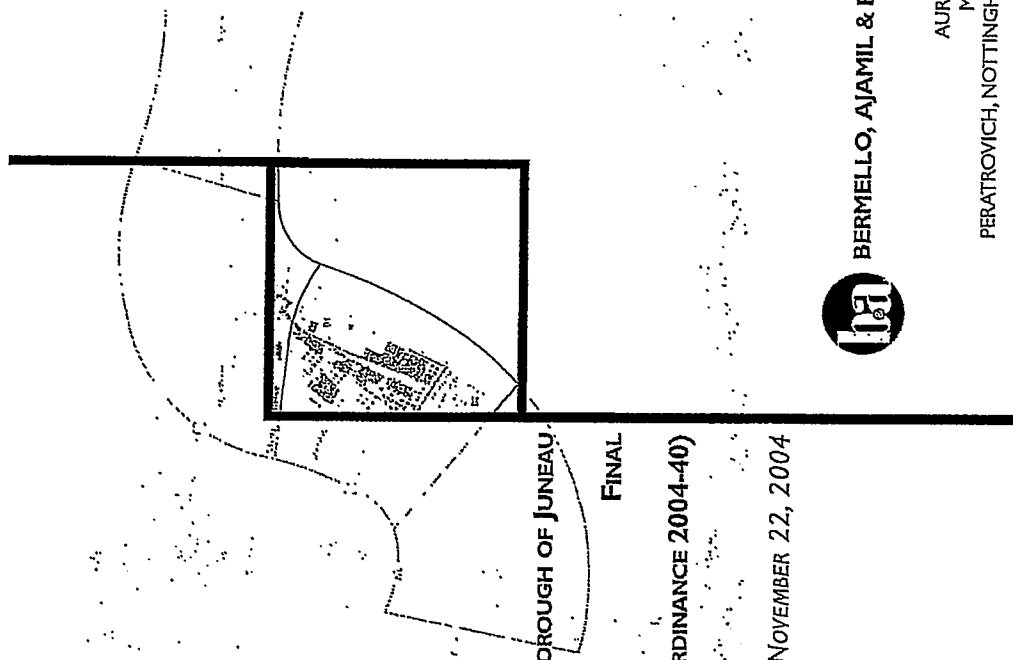
Obstructed View and access to  
Gastineau Channel after City's Dock

Statement of Bernie Osborne

1. My name is Arthur Bernie Osborne and I live in Juneau, Alaska.
2. I am a commercial fisherman and have commercially fished for almost 50 years.
3. I have also participated in the annual Blessing of the Fleet in front of the Commercial Fishermen's Memorial on the Juneau, Alaska waterfront every year since before 1993.
4. Looking offshore from the memorial which is next to the Taku Fisheries dock, my boat and the other boats participating in the Blessing move from right to left in front of the memorial during the blessing, after a fishing boat drops a wreath in front of the memorial.
5. Each boat is individually blessed as it passes by the memorial.
6. I have seen what the City of Juneau plans to build in front of the memorial. It is a huge dock.
7. The city's configuration of the dock in front of the memorial will not allow us to pass in front of the memorial any more to get blessed; we will have to go way offshore. We might as well stay in the harbor and have people that normally participate in the Blessing walk around the docks with flowers and hymnbooks.
8. While there is an open cul de sac area of water in front of the memorial between the new proposed dock and shore, the entire dock configuration poses hazards to navigation to boats like mine that have participated in the Blessing.
9. Even without this big dock the city plans to build, the ocean's current moves by this area very fast and is very tricky to maneuver. The new dock's configuration and the currents, coupled with winds and waves that often occur in Gastineau Channel, will make it impossible to have a boat parade for a Blessing. Who ever designed this new dock did not know much about maneuvering boats, or the effect of the dock and currents or boat traffic in the area.
10. I will not participate in a Blessing of the fleet anymore for safety reasons if the city goes ahead with the dock it plans to construct in front of the memorial. The new dock will put my boat and crew at risk if is constructed in front of the memorial.



Bernie Osborne, dated November 27, 2013



**LONG RANGE WATERFRONT PLAN FOR THE CITY AND BOROUGH OF JUNEAU**

**FINAL**

**ADOPTED, OCTOBER 25, 2004 (ORDINANCE 2004-40)**

**NOVEMBER 22, 2004**



**BERMELO, AJAMIL & PARTNERS, INC.**

with  
AURORA CONSULTING  
MCDOWELL GROUP  
PERATROVICH, NOTTINGHAM & DRAKE, INC.

The Plan calls for reconstruction of the Cruise Ship Terminal Dock to allow for two +/- 1,000 foot cruise ships to be accommodated at the City facilities (see Figure 36, feature D2 and D3). The configuration depicted in the Plan allows for preservation of the Intermediate Vessel Float and other important area artifacts such as the Fisherman's Memorial. Enhancements also include continuation of the seawalk around Taku Smokeries, including moving the Seawalk up and over the access to the Ice House. As part of this reconfiguration, consideration to expand the interactive and educational nature of Taku Smokeries should be explored. This approach would better communicate the importance of commercial fishing in SE Alaska as well as better solidify the future role of this important tenant along Juneau's Downtown waterfront area. View corridors throughout this area are also preserved, with no new development beyond reconstruction of the Visitor Information Center and bus stop. Expansion to vehicle marshalling areas and creation of a small park and gathering area are also contemplated for this area.

Development of privately held parcels in this area should follow similar standards suggested for Franklin Street parcels proximately to the CBJ Parking Garage and Library. Including multiple storefronts on both the land and seawalk sides. Development schemes should include the reuse of the AEL&P building as a mixed-use property housing artist, restaurant, retail and entertainment spaces (see Figure 36, feature D4). Reuse of the building should be true to its unique vernacular and character. Consideration should be provided to create a smaller structure across from the AEL&P building as well as a formalized pedestrian crossing and hardscape plaza; both elements work to slow traffic along Franklin Street, reduce conflict between vehicle turning movements into the properties, and provide definition for this area. Termination of the Seawalk and transition into a recreation corridor that follows Thane Road to the Little Rock Dump also occurs in this area. The Concept Plan calls for a smaller public terminus and overlook on a CBJ controlled parcel to provide an attractive overlook and final experience along the seawalk.

Over the long term, continued consideration should be given to the creation of a Gastineau-Marine Drive-South Franklin Street connector road (see Figure 36, feature D5). This connector road could be a one-way street only open during the late spring and summer months. Consideration needs to be given to land acquisition and design of a proper connection at the north end of the alternative road.

#### Suggested Design Criteria

Design criteria for Area D include the following (see Figure 40):

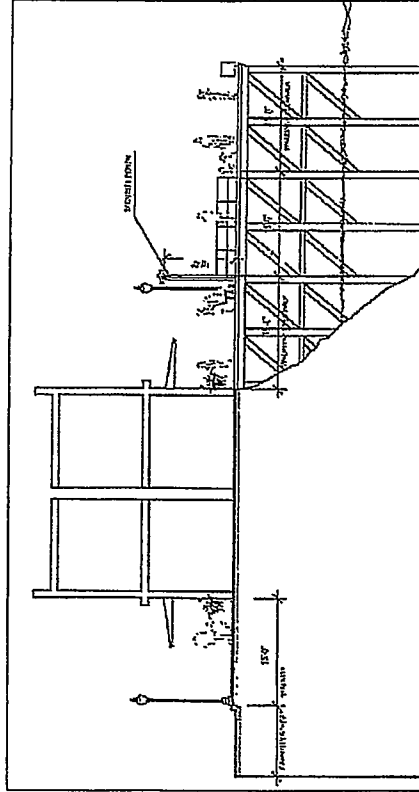
- **Massing and Scale – South Franklin Street.** Maintain building heights between 2- to 3-stories (35 to 45 feet) along South Franklin Street.
- **Massing and Scale – Waterside.** Maintain building heights between 2- to 3-stories (maximum 35 feet) along the waterfront. Discourage introduction of any new at grade lots between the street and waterfront in all locations. Waterside buildings should be encouraged to have double fronts (one on the waterfront and one on South Franklin Street).

The 2003 Long Range Waterfront Master Plan for the City and Borough of Juneau (FINAL, November 22, 2004)

- **Character.** Building types should include a mix of small and medium sized buildings. Building development with a mix of community oriented commercial activities on the ground floor with commercial office and/or residential units occupying upper floors should be encouraged. Buildings should be consistent with the historic maritime architectural character of Juneau and include deep recessed building openings and strong detailing. All buildings located within the Juneau Historic District boundaries shall meet the requirements of the Juneau Historic District standards. The Historic District standards shall be applied to an entire building whenever any portion of that building is located within the Juneau Historic District.

- **Transparency and Views.** Maximize transparency from South Franklin Street to the waterfront. Preserve views of the waterfront down each of the district's streets; a view corridor from Main Street to the waterfront should be opened (see Figure 42).

Figure 41: Massing and Scale – South Franklin Street Waterside Parcels.



- Area cultural facilities serve as important economic and social engines for the Downtown. Consideration should be provided to explore ways in which the cultural base of Downtown can be expanded.

#### Recreation and Open Space: Description of Users and Activities

Recreational uses and open spaces are often the primary threads that weave together great waterfronts, linking diverse uses and creating the special places where community residents and visitors congregate. Typical types of recreational uses and open spaces found in waterfront areas include passive and open space parks, pedestrian promenades, plaza, and waterfront recreational facilities (inclusive of public marinas and watersports areas). These facilities help provide one of the most sought after elements by community members of their waterfronts: public access.

For Juneau, these threads have evolved somewhat piecemeal, with only a few locations along the Downtown waterfront offering a recreational and/or park focus. Key facilities include the following:

- Marine Park.** This park area is the nexus of Downtown and the waterfront. Comprising +/- 1.3 acres of area, Marine Park is an agglomeration of two facilities. The older, original Marine Park facility is a wedge shaped parcel along Egan Drive from Seward Street to Ferry Way. The central focus of the park is a pyramid shaped canopy structure bordered by two bermed grass and tree areas and associated seating and walking areas facing the waterfront. In 2003, Marine Park was expanded to the south through decking over a portion of waterfront from Marine Way to the Steamship Dock. This facility is considered a "flex" space, providing a hardscape area that can be used for bus staging associated with cruise ship operations and as a multi-function public space. This expanded area is accentuated with a new terraced seating area and other public amenities.
- Downtown Seawalk.** The notion of creation of a public seawalk along Juneau's Downtown waterfront has been the subject of previous planning efforts dating back to the 1986 *Downtown Waterfront Plan*. While a formalized seawalk development effort never materialized, the utilization by pedestrians of the Steamship Dock and Cold Storage/South Ferry Dock and portions of walkway behind Merchant's Wharf for public recreation purposes has become an important public asset and the first component of the seawalk notion. These facilities receive significant use when cruise ships are not at these respective docks for a variety of recreational pursuits.

Other features present along the waterfront and within the study area that provide some recreational and/or park qualities, include: Three pocket parks along Franklin Street; Gold Creek and portions of the sidewalk along Egan Drive overlooking the Gold Creek Protection Zone; and sidewalk areas along South Franklin Street and Thane Road. Important public art and/or cultural icons include the Alaska Commercial Fishermen's Memorial and the USS Juneau Memorial and Miner Statue.

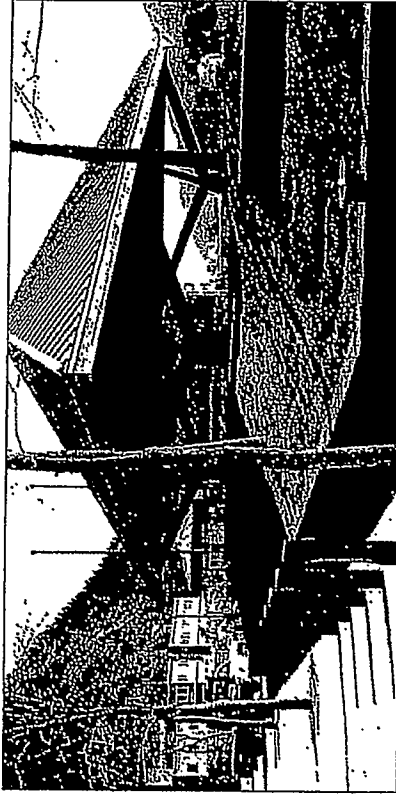
The 2003 Long Range Waterfront Master Plan for the City and Borough of Juneau (FINAL, November 22, 2004)

#### Recreation and Open Space: Issues and Opportunities

Identified issues and opportunities associated with recreational areas and open spaces include the following:

- There is strong public sentiment for expansion of recreation and open space facilities along the waterfront. Some of this sentiment is derived from a long term desire—as recorded as part of previous waterfront planning efforts—to expand recreational facilities. Other, more recent, shifts result from public concern that the waterfront area needs a greater balance between cruise related tourism operations and other pursuits.
- Without question, great waterfronts, especially those found in urban areas, are defined by their public spaces along the water's edge. The challenge for smaller communities is in finding the right mix of useable, cost effective public and recreation spaces while maintaining economically viable, deepwater maritime facilities. Cost associated with waterfront public recreation facilities is also often an issue (many of these park and recreation facilities are much more expensive to construct and maintain due to their marine environment, but one that many times can be offset by enhancing working waterfront parcels).

View of Marine Park from Downtown



Presented by: Mayor Parsons  
Introduced: 06/07/93  
Drafted by: Fisheries Development  
Committee

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1649

A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU RELATING TO EFFORTS BY THE JUNEAU COMMERCIAL FISHERMEN'S MEMORIAL COMMITTEES TO DESIGN, CONSTRUCT, AND DEDICATE A COMMERCIAL FISHERMEN'S MEMORIAL ALONG THE JUNEAU WATERFRONT.

WHEREAS, the 1991 *Alaska Fishermen's Journal* "Pilot House Guide" indicates that Juneau has one of the State's largest permanent fleets with 1,100 fishing boats docking in Juneau year round, and

WHEREAS, Juneau's harbors have approximately 864 berths with about 500 spaces for transient vessels, many of which are occupied by commercial fishing vessels, and

WHEREAS, approximately 680 commercial fishermen with permits in fisheries not restricted under Alaska's limited entry program live in Juneau, and 800 commercial fishing crew members who work on commercial fishing boats live in Juneau, and

WHEREAS, Juneau commercial fishermen fish for many species of fish and shellfish including crab, halibut, salmon, cod, shrimp, and rockfish, and

WHEREAS, a 1988 University of Alaska study found the death rate among Alaska's commercial fishermen to be 20 times higher than the average for all industries, and

WHEREAS, in 1991, 83 Alaskans died on the job, 41 of whom were working in the commercial fishing industry when they died, and

WHEREAS, according to the National Institute of Occupational Safety and Health, 278 persons died in commercial fishing vessel accidents in Alaska between 1981 and 1989, and

WHEREAS, Juneau commercial fishermen can never escape the possibility of losing their lives in pursuit of their occupation, and

WHEREAS, Juneau's past and present commercial fishermen have family and friends who live in Juneau and who desire to pay tribute to commercial fishermen by establishing a memorial, and

WHEREAS, a commercial fishermen's memorial along the Juneau waterfront would honor those commercial fishermen in Juneau who have perished in pursuit of their occupation, would demonstrate the good will of the people of the City and Borough of Juneau towards the commercial fishing industry in Juneau, and would express the community's appreciation for the commercial fishing industry and its contribution to the local citizenry, economy, and community, and

WHEREAS, a commercial fishermen's memorial would provide a focal point for family, friends, and others wishing to place flowers, wreaths, poems, and other suitable personal memorials, and would provide a non-denominational site for an annual celebration of commercial fishermen and a blessing of the fleet, and

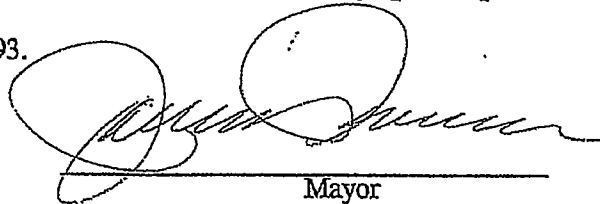
WHEREAS, a commercial fishermen's memorial would provide a testament to the courage and dedication of Juneau's commercial fishermen who work in this country's most dangerous occupation, and a testament to the City and Borough of Juneau's support and concern for commercial fishermen who live, work, and play in the City and Borough of Juneau and who make a positive contribution to Juneau through their strength, courage, and residence here, and

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

1. That the Assembly strongly supports the Juneau Commercial Fishermen Memorial Committee's efforts to design, construct, and dedicate a commercial fishermen's memorial along the Juneau waterfront.

2. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 7th day of June, 1993.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Clerk

1                   **RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU FISHERIES**  
2                   **DEVELOPMENT COMMITTEE RELATING TO THE JUNEAU COMMERCIAL**  
3                   **FISHERMEN'S MEMORIAL COMMITTEE'S EFFORTS TO DESIGN, CONSTRUCT,**  
4                   **AND DEDICATE A COMMERCIAL FISHERMEN'S MEMORIAL ALONG THE**  
5                   **JUNEAU WATERFRONT**

6                   **WHEREAS:**

7                   1.     The 1991 Alaska Fishermen's Journal Pilot House Guide indicates that Juneau has  
8                   one of the State's largest permanent fleets with 1,100 fishing boats docking in Juneau year  
9                   round; and

10                  2.     Juneau's harbors have roughly 864 berths with about 500 spaces for transient  
11                  vessels and commercial fishing vessels occupy many of these berths; and

12                  3.     Approximately 680 commercial fishermen with Alaska commercial fishing limited  
13                  entry permits reside in Juneau, and 1,342 commercial fishermen with permits in fisheries not  
14                  restricted under Alaska's limited entry program live in Juneau, and 800 commercial fishing crew  
15                  members who work on commercial fishing boats live in Juneau; and

16                  4.     Juneau commercial fishermen fish for many species of fish and shellfish including  
17                  crab, halibut, salmon, cod, shrimp, and rockfish;

18                  5.     A 1988 University of Alaska study found the death rate among Alaska's  
19                  commercial fishermen to be 20 times higher than the average for all industries; and

6. In 1991, 83 Alaskans died on the job and 41 of those Alaskans were working in the commercial fishing other industry when they died and according to the National Institute of Occupational Safety and Health, 278 persons died in commercial fishing vessel accidents in Alaska between 1981 and 1989; and

7. Juneau commercial fishermen have died in pursuit of their occupation in Alaska's commercial fishing industry, and will continue to face the possibility of dying on the job in pursuit of their occupation; and

8. Those commercial fishermen who live in Juneau and who have lived in Juneau have family and friends who live in Juneau; and

9. Commercial fishermen from Juneau have died while working in the commercial fishing industry and family and friends who have lost loved ones in the commercial fishing industry desire to pay tribute to commercial fishermen by establishing a memorial; and

10. A commercial fishermen's memorial along the Juneau waterfront will demonstrate the good will of the people of the City and Borough of Juneau towards the commercial fishing industry in Juneau; and

35           11.   A memorial for commercial fishermen living and working in Juneau and for  
36 Juneau commercial fishermen who have perished in pursuit of their livelihoods will demonstrate  
37 that Juneau appreciates the commercial fishing industry and its contribution to the local citizenry,  
38 economy, and community; and

39           12.   A commercial fishermen's memorial will honor those commercial fishermen in  
40 Juneau who have perished in pursuit of their occupation; and

41           13.   A commercial fishermen's memorial will provide a focal point for family, friends,  
42 and others wishing to place flowers, wreaths, poems, and other suitable personal memorials to  
43 those commercial fishermen from Juneau; and

44           14.   A commercial fishermen's memorial will provide a proud testament to the courage  
45 and dedication Juneau's commercial fishermen who work in this country's most dangerous  
6 occupation; and

47           15.   A commercial fishermen's memorial will provide a testament to the City and  
48 Borough of Juneau's support and concern for commercial fishermen who live, work, and play  
49 in the City and Borough of Juneau and who make a positive contribution to Juneau through their  
50 strength, courage, and residence here; and

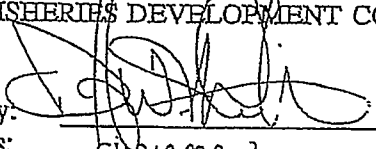
16. A commercial fishermen's memorial along the Juneau waterfront will provide a non-denominational place for gathering for an annual celebration of commercial fishermen and a blessing of the fleet.

**NOW, THEREFORE BE IT RESOLVED THAT:**

The City and Borough of Juneau's Fisheries Development Committee strongly supports the Juneau Commercial Fishermen Memorial Committee's efforts to design, construct, and dedicate a commercial fishermen's memorial along the Juneau waterfront.

DATED this 25<sup>TH</sup> day of MAY, 1993.

CITY AND BOROUGH OF JUNEAU  
FISHERIES DEVELOPMENT COMMITTEE

By:   
Its: Chairman

BBW:dsb  
a:fisher2.res

Presented by: The Manager  
Introduced: 11/14/94  
Drafted by: M.R.W./J.R.C.

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 1734

A RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU SUPPORTING DEVELOPMENT OF A SHORESIDE MEMORIAL TO ALASKANS WHO HAVE LOST THEIR LIVES IN THE PURSUIT OF COMMERCIAL FISHING OR WHO HAVE MADE EXTRAORDINARY CONTRIBUTIONS TO THE WELL BEING OF THOSE WHO DEPEND ON COMMERCIAL FISHING IN ALASKA.

WHEREAS, the City and Borough of Juneau is both home and home port to many Alaskans who make their living in whole or in part from commercial fishing, and

WHEREAS, Juneau is also a regional service center for the commercial fishing industry, and

WHEREAS, commercial fishing is an endeavor necessary to the well being of Alaska, the United States, and all who enjoy and depend on seafood, and

WHEREAS, commercial fishing is one of the most dangerous of occupations, claiming the lives of many Alaskans every year, including Juneau residents, and

WHEREAS, the friends and family of residents who have died in the course of commercial fishing have organized the Juneau Commercial Fishermen's Memorial, a nonprofit corporation, for the purpose of creating a memorial to acknowledge the bravery, sacrifice and memory of their loved ones, and

WHEREAS, the memorial organization has sought both a site and a design concept in order to establish a memorial that can be used as a non-denominational gathering place for the blessing of the fleet, as a place where the names of those who have died can be permanently inscribed, and as a place where loved ones can come to remember, and

WHEREAS, the volunteer memorial organization has selected a site on the shoreline in the vicinity of Taku Smokeries and the Intermediate Vessel Float, and

WHEREAS, this site is owned by Franklin Street Properties, Inc. which has generously agreed to make it available for use as a memorial, subject to an access easement to the City

and Borough of Juneau, and

WHEREAS, the organization, using efforts donated by Jensen Douglas Architects, has developed an appropriate design for the memorial structure, and

WHEREAS, completion of the project will depend upon donations from individuals, and organizations because public funds have been neither sought nor provided, and

WHEREAS, the project sponsors are ready to proceed with such fund raising, and

WHEREAS, Resolution 1649 adopted by the City and Borough of Juneau Assembly supported the Juneau Commercial Fishermen Memorial Committee's efforts to design, construct, and dedicate a commercial fishermen's memorial along the Juneau waterfront;

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


1. The Assembly supports the proposed site and design of the Juneau Commercial Fishermen's Memorial as an appropriate use and development of the downtown shoreline.

2. The Assembly regards the project as a worthy and noble effort deserving the support of any Juneau resident, organization or corporation having an interest in commercial fishing and an appreciation for those who have lost their lives in the pursuit thereof.

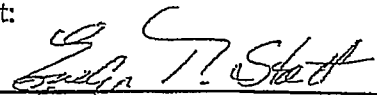
3. The Manager is authorized and directed to modify the city and borough easement with Franklin Street Properties to include the memorial as an allowable use under the terms of the easement, and to provide such other support and assistance as may be useful and practicable.

4. Effective Date. This resolution shall be effective immediately upon adoption.

Adopted this 14th day of November, 1994.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
Deputy Clerk

Presented by: The Manager  
Introduced: 07/15/96  
Drafted by: Finance

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 96-17 (C)

AN ORDINANCE APPROPRIATING TO THE MANAGER THE SUM OF \$94,060 FOR A LOAN TO THE JUNEAU COMMERCIAL FISHERMEN'S MEMORIAL. SUCH FUNDS PROVIDED BY THE UNAPPROPRIATED GENERAL FUND BALANCE.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

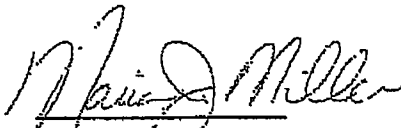
Section 2. Appropriation. There is appropriated to the Manager the sum of \$94,060 for a loan to the Juneau Commercial Fishermen's Memorial.

Section 3. Source of Funds.

Unappropriated General Fund Balance	\$94,060
-------------------------------------	----------

Section 4. Effective Date. This ordinance shall become effective upon adoption.

Adopted this 5th day of August, 1996.

  
Clerk

  
Mayor

# ALASKA

## Fishermen's memorial gets boost from city loan

THE JUNEAU EMPIRE

A city loan will complete the Juneau Commercial Fishermen's Memorial this fall.

Tuesday night the Juneau Assembly finance committee agreed to loan the memorial's board of directors \$94,060 needed to finish the granite memorial, which has been in the works about five years.

"It's been a little embarrass-

ing this summer because some of the people who sent donations from down south came up," said Elsie Osborne, a director on the board for the memorial. "I had to tell them we didn't have enough money to put it up."

Slabs of Vermont granite engraved with the names of 60 fishermen are waiting to be installed. When finished, the memorial will reach about seven feet at the

highest point and taper down to form a semi-circle facing the channel.

"We have to get it done before you can't mix the mortar, before it's too cold," said Bruce Weyrauch, president of the board of directors for the memorial.

Businesses, organizations and individuals already donated work and more than \$50,000 to create the memorial, said Linnea Os-

borne on the board of directors for the memorial. The Harbor Board also donated \$5,000 to the project.

"It should have been a city project," said Mayor Dennis Egan. "The city should have been involved from the get-go."

Weyrauch told the finance committee the board will continue fund-raising to repay the city loan.



November 4, 2009

John Stone  
Port Director  
City and Borough of Juneau  
155 South Seward Street  
Juneau, AK 99801

Dear John:

The member lines of the Alaska Cruise Association (ACA) oppose the investment of funds, no matter how sourced, in the expansion of the Juneau cruise ship dock facilities now or in the foreseeable future.

No new dock capacity is needed in view of the near and mid-term outlook for the cruise industry in Alaska. For 2010 alone, the four largest carriers have moved significant capacity away from Alaska to other markets. Absent changes in the economics of cruising in Alaska, we have no reason to believe that trend will change.

The industry has been clear that Alaska has become a costly place to do business. Recent increases in taxes and operational costs arising from regulatory changes have already impacted the lines' outlook for their future in Alaska. The reduced demand for additional berth space in Juneau and Alaska as a whole is at least partly attributable to the rising cost of doing business here.

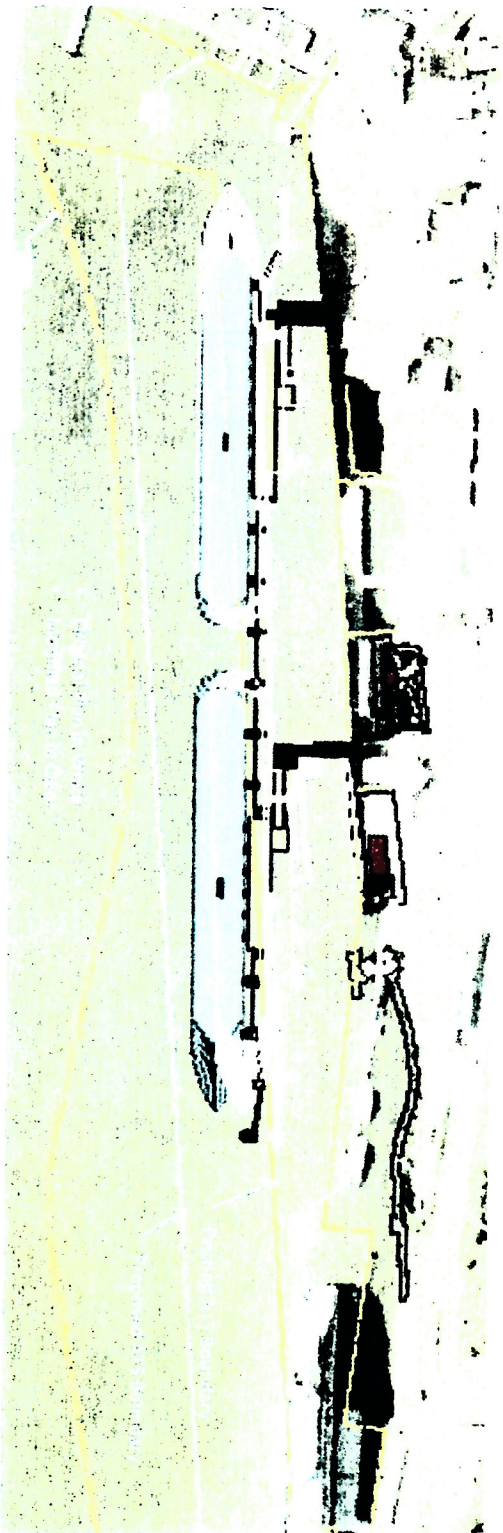
The ACA therefore encourages the City & Borough of Juneau, as well as its docks and harbors board, to not consider any new port expansion in Juneau. The ACA does support, however, the expenditure of funds needed to effect long term repairs to the existing dock structures to assure their viability and efficient operation and maintenance as soon as possible.

Thank you for your consideration of our views. We encourage ongoing dialogue with the cruise lines considering future work in Juneau.

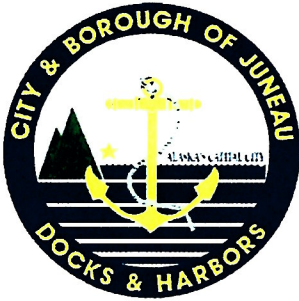
Sincerely,

John Binkley  
President  
Alaska Cruise Association

Attachment 9  
Page 1 of 1



**ATTACHMENT 1B**



# Port of Juneau

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155 S. Seward Street • Juneau, AK 99801  
(907) 586-0292 Phone • (907) 586-0295 Fax

November 19, 2013

Bruce B. Weyhrauch, for  
Alaska Commercial Fishermen's Memorial in Juneau  
P.O. Box 20092  
Juneau, Alaska 99801

Dear Mr. Weyhrauch;

At the City Manager's request, this letter addresses questions and comments, contained in your letter of November 13, 2013, about the status of state owned submerged lands upon which a small portion of the Port of Juneau Cruise Ship Berths project would be constructed.

I am sure you are aware that a project of this magnitude has many elements requiring numerous permits, reviews, and approvals. Typical of projects of this scale, many processes are in play concurrently in order to meet deadlines and project completion expectations.

On August 23, 2011 Docks and Harbors (D&H) applied for a Corps of Engineers (Corps) Permit to develop the project. The plans submitted showed the entire structure of the project being constructed on CBJ owned tidelands. Alaska Department of Natural Resources, Division of Mining, Lands and Water (DMLW), was a participant during the permitting process. They pointed out that the cruise ships moored at our proposed berths would be located over state tidelands – the structures would be on CBJ tidelands but the ships would be over state tidelands. They encouraged us to apply for a tideland conveyance under Alaska Statute 38.05.825<sup>1</sup> indicating that it was a routine process. D&H applied for the conveyance on December 1, 2011.

On January 10, 2012 the CBJ Planning Commission (Commission) held a public hearing for a Conditional Use Permit (CUP) to allow development of the proposed cruise berths. After public testimony and lengthy discussion, the Commission continued the hearing and directed D&H to address issues raised at the hearing. D&H went back to the drawing board and made significant changes to address a number of issues including the primary concern regarding safe access to Taku Dock and the Alaska Commercial Fishermen's Memorial (Memorial). The fairway providing access to Taku Dock and the Memorial was increased from approximately 135 feet to approximately 211 feet.

The revised plan (see Attachment 1), presented to the Commission on June 26, 2012, clearly showed the changes to the original design resulting in a small portion of the south end of the project encroaching onto the state tidelands. After public testimony and Commission discussion the CUP was approved. At that

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<sup>1</sup> Preliminary Decision document (November 7, 2013): "Unless it is found that the public interest in retaining the land in State ownership clearly outweighs CBJ's interest, AS 38.05.825(a) requires DMLW to convey to CBJ tide and submerged lands suitable for occupation and development when requested by CBJ ..."

## ATTACHMENT 1B

Bruce B. Weyhrauch, for  
Alaska Commercial Fishermen's Memorial  
November 19, 2013  
Page 2 of 2

point we immediately notified the Corps and DMLW of the changes whereby they directed us to prepare applications to modify the Corps Permit and DMLW conveyance request.

On July 19, 2012 the CUP was appealed to the Assembly. The Corps and DMLW informed us that even though they had the modified plans for the cruise berths project they would hold off on their review and decision until the appeal process was completed. On January 7, 2013 the Assembly upheld the Commission's action to approve the CUP. The Corps issued a modified permit for the project on April 4, 2013. DMLW issued its Preliminary Decision recommending the state tidelands conveyance on November 7, 2013<sup>2</sup>. It is anticipated that a final decision document will be issued sometime in December or January 2014.

Throughout the lengthy process of obtaining permits, approvals, and the tideland conveyance D&H has been forthcoming with needed information about the project. We have kept the agencies and the public informed about the project as changes occurred. DMLW assured us this tideland conveyance was routine and that they support the action which has been affirmed with their Preliminary Decision document. It is unfortunate this has taken so long to process but we were in constant communication with them encouraging quick resolution only to be told they were understaffed and they would proceed as time allowed. The Preliminary Decision has now been issued so the process must run its course.

We fully anticipate the tidelands will be conveyed as the state statute requires. With an abundance of caution we have placed the bid process on hold until this issue is resolved. Once the final decision has been rendered we will resume the bid process and look forward to a successful project.

Mr. Weyhrauch, we very much thank you for your well spoken words of gratitude and appreciation expressed in your testimony under Public Comments on Non-Agenda Items at the recent Docks and Harbors Board meeting of October 31, 2013. We always welcome comments on our operations and especially appreciate praise when it is expressed. From the top down my staff and I honor, respect, and protect the Memorial. Although we have no formal directive to do so, in the past, we have distributed applications for name nominations, removed snow in winter, and performed routine maintenance of the Memorial. We understand the sensitive nature of the Memorial and the important role it plays in our community.

While we understand your concerns about how the cruise berth project may impact the Blessing of the Fleet ceremony, we believe the extensive changes made to the project will allow an honorable ceremony to continue for years to come. As we have in the past, we continue to offer assistance in doing whatever we can to make the Blessing of the Fleet a ceremony that the community can be proud of.

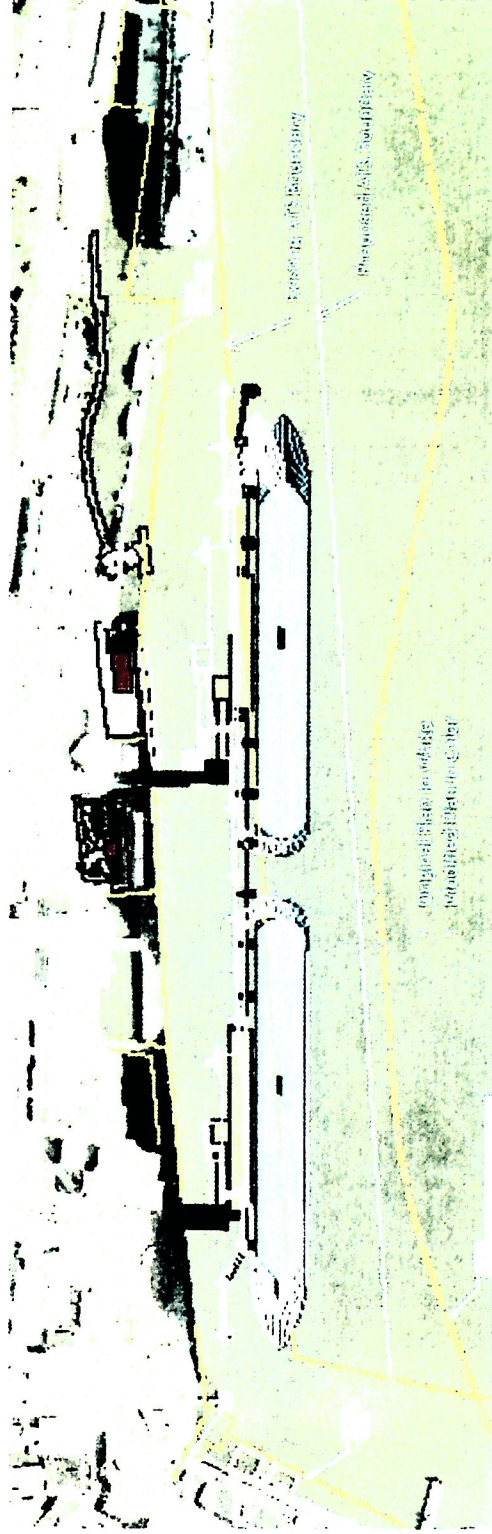
Sincerely;

  
Carl Uchytel, PE  
Port Director

cc: Kim Kiefer, CBJ City Manager

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<sup>2</sup> Preliminary Decision document (November 7, 2013): "regarding permits, on March 18, 2013, CBJ obtained a Department of the Army permit, POA-2011-924-M1. The Corps modified the permit on April 4, 2013. The Department of Environmental conservation waived its State Water Quality Certification requirement on May 10, 2013. Thus, all requisite permits have been obtained by CBJ."



ATTACHMENT 1

**Final Finding and Decision**  
**ADL 108124**  
**Attachment 2 to the Final Finding and Decision**  
**Appeal References**

**Alaska Statute (AS) 38.05.035**

(i) A person who is eligible to file an administrative appeal or a request for reconsideration, as appropriate, under this subsection and who is aggrieved by the final written finding of the director entered under (e)(5) or (6) of this section may, within 20 days after the issuance of the final written finding, file an administrative appeal or request reconsideration of the decision by the commissioner. A person is eligible to file an administrative appeal or a request for reconsideration if the person

(1) meaningfully participated in the process set out in this chapter for receipt of public comment by

(A) submitting written comment during the period for receipt of public comment; or

(B) presenting oral testimony at a public hearing, if a public hearing was held; and

(2) is affected by the final written finding.

(j) An administrative appeal or a request for reconsideration submitted under (I) of this section must specify the written finding complained of and the specific basis upon which it is challenged. The commissioner shall grant or deny the administrative appeal or reconsideration request within 30 days after issuance of the final written finding. Failure of the commissioner to act on the request for reconsideration within this period is a denial of the request for reconsideration and a final administrative decision for purposes of appeal to the superior court.

**Alaska Administrative Code (AAC) - 11 AAC 02. Appeals**

**11 AAC 02.010. APPLICABILITY AND ELIGIBILITY.** (a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by 11 AAC 02.040.

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by 11 AAC 02.040.

(g) A person may not both appeal and request reconsideration of a decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**11 AAC 02.015. COMBINED DECISIONS.** (a) When the department issues a combined decision that is both a final disposal decision under AS 38.05.035(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in AS 38.05.035(i) - (m) and this chapter applies to the combined decision.

(b) A decision of the department may include a statement that a final consistency determination under AS 46.40 (Alaska Coastal Management Program) has been rendered in conjunction with the decision. A person may not, under this chapter, appeal or request reconsideration of the final consistency determination, including a requirement necessary solely to ensure the activity is consistent with the Alaska coastal management program as approved under AS 46.40. (Eff. 9/19/2001, Register 159)

**11 AAC 02.020. FINALITY OF A DECISION FOR PURPOSES OF APPEAL TO COURT.** (a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under 11 AAC 02.040(c)—(e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**11 AAC 02.030. FILING AN APPEAL OR REQUEST FOR RECONSIDERATION.** (a) An appeal or request for reconsideration under this chapter must

- (1) be in writing;
- (2) be filed by personal *service*, mail, fax, or electronic mail;
- (3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;
- (4) be correctly addressed;
- (5) be timely filed in accordance with 11 AAC 02.040;
- (6) specify the case reference number used by the department, if any;
- (7) specify the decision being appealed or for which reconsideration is being requested;
- (8) specify the basis upon which the decision is challenged;
- (9) specify any material facts disputed by the appellant;
- (10) specify the remedy requested by the appellant;
- (11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;
- (12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.

(b) At the time an appeal is filed, and up until the deadline set out in 11 AAC 02.040(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the requirement of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in 11 AAC 02.060(c), an appellant who believes a stay of the decision is justified may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**Editor's note:** The address for an appeal or request for reconsideration by personal service and by mail is: Department of Natural Resources, Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501-3561. The number for an appeal or request for reconsideration by fax is: 1-907-269-8918. The electronic mailing address for an appeal or request for reconsideration by electronic mail is: [dnr\\_appeals@dnr.state.ak.us](mailto:dnr_appeals@dnr.state.ak.us)

**11 AAC 02.040. TIMELY FILING; ISSUANCE OF DECISION.** (a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is

set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct, issuance by certified mail occurs when the decision is deposited

in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under 11 AAC 02.030(a)(11).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

(1) when the department gives public notice of the decision; or

(2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under AS 44.37.011(d) or AS 44.62.540(a). (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**11 AAC 02.050. HEARINGS.** (a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in 11 AAC 02.030(a)(13), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

(1) formal rules of evidence need not apply; and

(2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript. (Eff. 11/7/90, Register 116)

**11 AAC 02.060. STAYS; EXCEPTIONS.** (a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided, in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

(1) issue a permit, that is revocable at will;

(2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or

(3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**11 AAC 02.070. WAIVER OF PROCEDURAL VIOLATIONS.** The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)

**11 AAC 02.080. DEFINITIONS.** Repealed. (Eff. 11/7/90, Register 116; repealed 9/19/2001, Register 159)

**11 AAC 02.900. DEFINITIONS.** In this chapter,

(1) “appeal” means a request to the commissioner to review a decision that the commissioner did not sign or cosign;

(2) “appellant” means a person who files an appeal or a request for reconsideration.

(3) “commissioner” means the commissioner of natural resources;

(4) “decision” means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) “department” means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) “request for reconsideration” means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned. (Eff. 11/7/90, Register 116; am 9/19/2001, Register 159)