

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

Stephen M Bower,
Plaintiff,
vs.
City and Borough of Juneau,
Defendant.

CASE NO: 1JU-25-00593CI

**SUMMONS AND NOTICE TO BOTH
PARTIES OF
JUDICIAL ASSIGNMENT**

To Defendant: City and Borough of Juneau

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 123 4th Street, PO Box 114100 Juneau, AK 99811 within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:
Plaintiff's attorney or plaintiff (if unrepresented): Scott Hoby Perkins
Address: 205 E Benson Blvd Suite 324 Anchorage AK99503

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf>, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

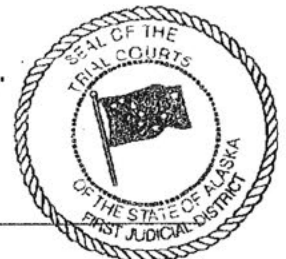
This case has been assigned to Judge Amy G Mead

(SEAL)

4/8/2025

Date

By: EEvans *Eric W. Evans*
CLERK OF COURT
Deputy Clerk



*The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

I certify that on 4/8/25

a copy of this order was mailed or delivered to:

Clerk: EEvans

CBJ CLERK

APR 09 2025

RECEIVED

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STEPHEN M. BOWER,

Plaintiff,

v.

CITY AND BOROUGH OF JUNEAU,

Defendant.

Case No. 1JU-25-_____CI

CBJ CLERK

APR 09 2025

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COMPLAINT

COMES NOW, Plaintiff, Stephen M. Bower, by and through counsel of record, Perkins & Associates, LLC, hereby files a *Complaint* against Defendant the City and Borough of Juneau.

Plaintiff alleges as follows:

PARTIES

1. Plaintiff, Stephen M. Bower, ("Bower") is a resident of Alaska and owns the real property located [REDACTED], Juneau, Alaska 99801 ("Property") and is subject to this court's jurisdiction.

2. Defendant, the City and Borough of Juneau ("Juneau") is within the First Judicial District, State of Alaska and is Subject to this court's jurisdiction.

JURISDICTION AND VENUE

3. The real property subject to Juneau's taking has a legal description of:

Lot A1A, Block 4, of the Lengthy Acres Survey According to the official plat thereof filed under Protracted Section 19, T.40 S. R.66 CRM in the records of the Juneau Recording District, First Judicial District, State of Alaska

4. The property is more commonly known as [REDACTED], Juneau, Alaska 99801 with a parcel ID number [REDACTED].

PERKINS & ASSOCIATES, LLC
205 E Benson Blvd, ste 324
ANCHORAGE, AK 99503
Tel. (907) 720-5195
Frontdesk@perkinsevidents.com

PS

1 5. The court has jurisdiction over the parties and real property as the suit is contained to the
2 first judicial district.

3 6. Jurisdiction and venue are proper in the Superior Court for the Third Judicial District at
4 Juneau. This Court has subject matter jurisdiction under AS 22.10.020.
5

6 **FACTUAL BACKGROUND**

7 7. Since 2011 jökulhlaups, also known as glacial outburst floods, continue to occur in the
8 Suicide Basin above the face of the Mendenhall Glacier.

9 8. A series of floods in August of 2023 and 2024 damaged homes in the Mendenhall Valley.

10 9. At no point during either of these events was Bower's home damaged.

11 10. To address the flooding Juneau elected to erect barriers, reducing the useable space on
12 parcels Juneau *believes* will be affected by future flooding.

13 11. Juneau began sending out questionnaires and holding community meetings about the Hesco
14 barriers it planned to install.
15

16 12. The Mendenhall river is a navigable waterway.

17 13. As a navigable waterway the it is protected by Section 404 of the Clean Water Act.

18 14. There are activities that may be conducted without a permit in a navigable waterway,
19 installing barriers is not one of them.
20

21 15. Section 404(f) exemptions do not apply to any activity within a "navigable water of the
22 U.S." in which a permit is required under Section 10 of the Rivers and Harbors Act of 1899.

23 16. This means the work performed, reshaping the course of the river with barriers, must be
24 permitted.
25

26 17. In order to obtain a permit an Environmental Assessment must be performed under the
27 National Environmental Policy Act or NEPA.
28





1 18. Juneau has failed to confirm that an Environmental Assessment occurred.

2 19. Juneau has failed to confirm that a NEPA permit was issued after the Environmental
3 Assessment occurred.

4 20. The Mendenhall is an environmentally sensitive area that is protected by the Magnuson-
5 Stevens Fishery Conservation Management Act.

6 21. Juneau's plan to install barriers will impact fish habitats both the barriers themselves and the
7 heavy equipment installing the barriers.

8 22. To pay for the unpermitted barriers Juneau created a Local Improvement District or LID.

9 23. Authorization for such comes from Municipal Code § 15.10.010.

10 24. The barriers are designed to be approximately 16 feet in height.

11 25. The Property's elevation is 21-22 feet above the river level.

12 26. The barriers will not benefit the property in anyway and will be an additional cost to Bower.

13 27. The cost is not proportional to the benefit as there is no benefit, only a taking.

14 **COUNT I: INJUNCTIVE RELIEF - BARRIERS**

15 28. Bower repeats and realleges paragraphs 1 through 27 above as though fully set forth herein.

16 29. Currently the Bureau of Land Management and EPA databases do not show any active
17 NEPA permits or ongoing environmental assessments for the Mendenhall.

18 30. Currently the Bureau of Land Management and EPA databases do not show there was a
19 Finding of No Significant Impact or FONSI after the environmental assessment.

20 31. The Mendenhall is a navigable waterway protected by Section 404 of the Clean Water Act.

21 32. In order to place barriers and heavy machinery in the water there must be a NEPA permit.

22 33. A NEPA permit may only issue after an environmental assessment and a FONSI.

23 34. At this juncture it appears neither of those have occurred.



1 35. Without meeting the federal requirements Juneau cannot alter the course or flow of the
2 Mendenhall with earthen Hesco barriers.

3 36. This failure to comply means the work must stop immediately before irreparable harm
4 comes to a critical marine environment.
5

6 37. The barriers will irreparably alter Bower's property.

7 **COUNT II: INJUNCTIVE RELIEF - LID**

8 38. Bower repeats and realleges paragraphs 1 through 37 above as though fully set forth herein.

9 39. In order to pay for the unpermitted barriers in a sensitive marine environment Juneau is
10 levying a local improvement district to force homeowners to pay for the barriers.
11

12 40. Juneau statute § 15.10.010 authorizes the borough to:

13 create and establish a local improvement district for any municipal improvement
14 and may levy assessments against properties specially benefitted thereby to pay
15 part or all of the costs thereof. In proportion to the benefits, the method of
apportioning shall be established in the ordinance initiating the district.

16 41. The key phrase in the statute is "in proportion to the benefits"

17 42. Bower's home is 21-22 feet above the level of the river.

18 43. The proposed barriers are going to be a height of 16 feet.

19 44. The property as such will have no benefit whatsoever from the proposed barriers

20 45. The proportional benefit to the property is zero percent.

21 46. As there is a zero percent proportional benefit Bower should not have to pay for a barrier.

22 47. These facts entitle Bower to judgment on the pleading exempting him from the LID.
23

24 **COUNT III: GOVERNMENTAL TAKING-CONDEMINATION**

25 48. Bower repeats and realleges paragraphs 1 through 47 above as though fully set forth herein.

26 49. The US Constitution prevents government takings.
27
28



- 1 50. The Takings Clause of the Fifth amendment states, "Nor shall private property be taken for
2 public use, without just compensation."
3
4 51. The Alaska Constitution also provides protection from governmental takings. Article 1
5 section 18 states, "Private property shall not be taken or damaged for public use without
6 just compensation."
7
8 52. Juneau erroneously relies on Alaska Statute 26.23.140 for authorization. The statute does
9 not trump the Alaska Constitution.
10
11 53. Alaska Statute 26.23.140 does not trump the US Constitution.
12
13 54. Juneau tried to get property owners to unknowingly waive their rights by distributing
14 Memorandums of Understanding for property owners to sign and return.
15
16 55. Juneau committed a deceptive practice by attempting to trick property owners into waiving
17 their rights.
18
19 56. Juneau unilaterally declared placing Hesco barriers are not a taking in communications with
20 residents.
21
22 57. This statement is incorrect the Hesco barriers will prevent Bower from accessing parts of
23 his property.
24
25 58. The Hesco barriers occupy physical space on the real property rendering it unusable.
26
27 59. The Hesco barriers destroy the view for which the property was purchased.
28
60. Bower is damaged by the barriers as they are the very definition of a taking: using private
property for a perceived public good.
61. The solution is not a payment by Juneau. The solution is not installing the barriers.

COUNT IV: DECLARATORY JUDGMENT

62. Bower repeats and realleges paragraphs 1 through 61 above as though fully set forth herein.

63. Bower seeks to invalidate Ordinance 2024-40(am) creating the LID 210 Hesco barrier project.
64. Bowe has standing to attack the statute as he owns an affected property.
65. Bower has standing to attack the statute as taxpayer.
66. There is no purpose to the LID as the project it funds was not properly permitted.
67. The LID is an unconstitutional taking, both in levying funds and destroying private property without benefiting those in the LID.
68. The entire project must be scrapped.
69. Bower is damaged by the levying of the LID and the barriers to be placed on his property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff moves this court for any and all of the following relief:

1. To enjoin Juneau from erecting Hesco barriers on Bower's property;
2. To mandate Juneau follow federal law when seeking NEPA permits for any work affecting the Mendenhall River;
3. To invalidate Ordinance 2024-40 creating the LID;
4. To enjoin Juneau from levying funds for LID No. 210;
5. To exempt [REDACTED], Juneau, Alaska 99801 from LID No. 210,
6. An award of attorney's fees, and;
7. For such other and further relief as the court deems just and equitable.

DATED: April 8, 2025

Perkins & Associates, LLC
Attorneys for Plaintiff

s/Scott H. Perkins/
Scott H. Perkins
ABA No. 1906054