



City of Valdez

212 Chenega Ave.
Valdez, AK 99686

Meeting Agenda

Planning and Zoning Commission

Wednesday, August 31, 2016

7:00 PM

Council Chambers

Regular Meeting - Moved from 8/24 Due to Scheduling Conflicts

REGULAR AGENDA - 7:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC BUSINESS FROM THE FLOOR

IV. NEW BUSINESS

1. [CUP #16-03: Approval of Conditional Use Permit for Four \(4\) Rental Cabins on Lot 9, USS 5670 and Two \(2\) Rental Cabins on Lot 10, USS 5670. Applicant: Josh Swierk.](#)

Attachments:

[Swierk Rental Cabins F&C 7_13_16.docx](#)

[Attorney Letter.pdf](#)

[Aerial Lots 9 & 10, USS 5670 CUP#16-03.pdf](#)

[Swierk CUP#16-03 Appl.pdf](#)

[VMC Chapter 17.26 CR.pdf](#)

[Chapter 17.06 VMC.pdf](#)

[Chapter 17.50 VMC.pdf](#)

[Proceed on Cabin Rentals CUP#16-03_email Reply.pdf](#)

[Complaint letter #2 Swierk Cabin Rentals CUP 16-03-HANDOUT AT MTG.pdf](#)

[Complaint ltr for CUP#16-03 Swierk_Cabin Rentals.pdf](#)

[CUP attorney determination.pdf](#)

2. [\(Rezone #16-06\) Approve Recommendation to City Council to Authorize the rezone of Tracts 2 & 3, Alpine Village, from Multi-Family Residential \(RC\) to Tract 2 Commercial Residential \(CR\) and Tract 3 Light Industrial \(LI\). Applicant: Dwain Dunning](#)

Attachments:

[Dunning REZONE FC 08 19 16 FINAL.docx](#)

[Rezone Application 16-06 Dunning.pdf](#)

[Dunning letter from 1988.pdf](#)

[Hickel Letter.pdf](#)

[residential letter PZ USS 3323 may 17 2016.pdf](#)

V. COMMISSION BUSINESS FROM THE FLOOR

VI. ADJOURNMENT



Agenda Statement

File #: 16-0030 **Version:** 1

Type: New Business **Status:** Agenda Ready

File created: 7/12/2016 **In control:** Planning and Zoning Commission

On agenda: 8/31/2016 **Final action:**

Title: CUP #16-03: Approval of Conditional Use Permit for Four (4) Rental Cabins on Lot 9, USS 5670 and Two (2) Rental Cabins on Lot 10, USS 5670. Applicant: Josh Swierk.

Sponsors:

Indexes:

Code sections:

Attachments: [Swierk Rental Cabins F&C 7 13 16.pdf](#)
[Attorney Letter.pdf](#)
[Aerial Lots 9 & 10, USS 5670 CUP#16-03.pdf](#)
[Swierk CUP#16-03 Appl.pdf](#)
[VMC Chapter 17.26 CR.pdf](#)
[Chapter 17.06 VMC.pdf](#)
[Chapter 17.50 VMC.pdf](#)
[Proceed on Cabin Rentals CUP#16-03_email Reply.pdf](#)
[Complaint letter #2 Swierk Cabin Rentals CUP 16-03-HANDOUT AT MTG.pdf](#)
[Complaint ltr for CUP#16-03 Swierk_Cabin Rentals.pdf](#)
[CUP attorney determination.pdf](#)

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------------------------|--------|--------|
| 7/27/2016 | 1 | Planning and Zoning Commission | | |
| 7/27/2016 | 1 | Planning and Zoning Commission | | |
| 7/27/2016 | 1 | Planning and Zoning Commission | | |

ITEM TITLE:

CUP #16-03: Approval of Conditional Use Permit for Four (4) Rental Cabins on Lot 9, USS 5670 and Two (2) Rental Cabins on Lot 10, USS 5670. Applicant: Josh Swierk.

SUBMITTED BY: Lisa Von Bargaen, CED Director

FISCAL NOTES:

Expenditure Required: N/A
Unencumbered Balance: N/A
Funding Source: N/A

RECOMMENDATION:

Approve CUP #16-03: Conditional Use Permit for Four (4) Rental Cabins on Lot 9, USS 5670 and Two (2) Rental Cabins on Lot 10, USS 5670 with the conditions outlined in the Findings &

Conclusions.

SUMMARY STATEMENT:

Action on this item was postponed for two meetings pending Staff's ability to check on four items: 1) Building Inspection of the Cabins on the property intended to be used under the CUP; 2) The status of the existing septic system on the property and cabin sewage disposal; 3) Fire Code safety of the cabins; and 4) Legal interpretation of adding conditions to this CUP regarding alleged violations on other/adjacent property under ownership by the applicant.

- 1) City staff inspected the properties on Wednesday, August 24th. Lot 9 contains the house that was originally built on the property, and one cabin. Lot 10 remains undeveloped at this time. The Building Inspector was out of town on this date, but she will be dispatched to inspect the single cabin on Lot 9 upon her return. The cabin is set up very similarly to those at Eagle's Rest RV Park. The cabin is on a chassis on wheels and is blocked. This type of cabin nearly meets the City's definition of a Recreational Park Trailer which is "Recreational park trailer" means a unit designed for use as temporary or seasonal nonpermanent overnight accommodations that is built on a single chassis, mounted on wheels, and is permanently towable by a light duty vehicle. It may not exceed four hundred square feet in the set-up mode when measured at the largest horizontal projections. The unit must be certified by a manufacturer complying with ANSI standard A 119.5 and must be registered in the state in which it is domiciled." The cabin may also be able to meet the draft regulations the City has for MHR or Mobile Home Replacement Dwelling. Rusty Hansen will inspect this cabin when she returns. If the CUP is approved she will inspect all other cabins as they are installed. The cabin has been occupied from time to time.
- 2) During the field visit the location and area of the existing septic system on the property was inspected. The system is only used to serve the existing home on the property. There was no odor or effluent noted in the area. Upon speaking with the adjacent property owner he still maintains there is effluent leaching off the property. During the field inspection it was noted the system may be closer than it should be to a slope. As with all existing systems, Community Development will work with the applicant to determine if a fix is required. This should be separate from the cabin CUP as the sewage from the existing cabin is going into its own holding tank which will be regularly pumped. The current, and all subsequent cabins will be equipped with macerating toilets and individual holding tanks. The tanks will be inspected to ensure they meet proper regulations.
- 3) As stated earlier, there is one cabin on the property. It will be fully inspected upon return of the Building Inspector. Fire Code items, as applicable will be included in the inspection.
- 4) The land attorney used by the City has been contacted regarding the Commission's ability to take other alleged violations on adjacent property into consideration under this CUP. His answer is:

The remainder of this agenda statement remains the same from the second meeting in July.

The City of Valdez received a request from Joshua Swierk for a Conditional Use Permit for the placement of four rental cabins on Lot 9, USS 5670 and two rental cabins on Lot 10, USS 5670. The property is currently zoned Commercial Residential (CR) and rental cabins are a conditional use within that zoning district (Section 17.26.040 (39) VMC).

Section 17.04.1235 defines rental cabins as, "...a single-family dwelling that does not exceed seven hundred square feet in total area and contains no more than one sleeping room or area, and is available for rent on a

limited or long term basis.” Mr. Swierk has provided information that the cabins are 12’ x 16’ is size, or 192 square feet. This is far below the maximum square footage allowed for a rental cabin.

There is currently a residential cabin (single family dwelling) existing on Lot 10 that was constructed prior to the purchase of the property by the current owner and this will not be used as one of the rental cabins. Mr. Swierk would like to place rental cabins on Lots 9 & 10 for the purpose of providing lodging for his growing business. Josh states that the rental cabins will be hill top lots with views of their existing lodge (Robe Lake Lodge).

At one point during the review of the application Mr. Swierk asked if he could pursue a combination permit for both rental cabins and an RV Park. The reason for this request is that Mr. Swierk’s cabins are very similar to those cabins used at both Eagle’s Rest RV Park and the Totem Inn. Mr. Swierk ultimately decided to move forward with the CUP for rental cabins only. In staff’s opinion this is a good decision as the requirements for an RV Park are very cumbersome and it is possible the property might not be suitable to meet the minimum requirements. A copy of that email chain is attached to this agenda statement along with other items.

The Valdez Municipal Code, Section 17.50.020 (Criteria to be considered [for a CUP] states the following:

In considering the granting of a conditional use, the planning and zoning commission shall satisfy itself that the general criteria set forth for uses specified in this title will be met. The planning and zoning commission may consider any or all of the criteria listed in this section and may base conditions or safeguards upon them.

The planning and zoning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. The general criteria for considering the conditions, if any, under which permission for a particular conditional use shall or shall not be granted in a district in which that use is specified in the district regulations are as follows:

A. Topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality, and the probable effects of the proposed conditional use upon these factors.

Mr. Swierk will be required to provide slope and soil stability, and drainage conditions for the parcels.

B. Utilities and services requirements of the proposed conditional use, including sewers, storm drainage, water, fire protection, access and electrical power; the planning and zoning commission may request the assistance of public officials with knowledge of the relevant public utility and service systems in evaluating the probable effects of the proposed use of public systems, and may consider the costs of enlarging, upgrading or extending public utility or service systems for the proposed use in establishing conditions under which the use shall be permitted.

Mr. Swierk has provided documentation that each of the units will have separate, self-contained potable water and sewer tanks. No additional well and septic service will be required on the lot at this time. Mr. Swierk will be required to submit a written sewage disposal plan as it may be impossible for a pump truck to reach the properties in either summer, but especially winter. The sewage disposal plan will need to explain how Mr. Swierk intends to properly dispose of the waste off-site. There are no public utility services in the area.

C. Lot or tract characteristics, including minimum lot size, minimum yard requirements, maximum lot

coverage by all buildings or structures, and maximum height of buildings or structures.

Lot 9 is .92 acres or approximately 40,075 square feet. Lot 10 is 1.62 acres or 70,567 square feet. The minimum lot size in a Commercial Residential zoned district is 11,000 square feet for up to four units, plus an additional 1,500 square feet per additional unit. The acreage of both lots far exceeds the minimum lot size given the intended use of four cabins on Lot 9 and two cabins, plus an existing house on Lot 10. The maximum lot coverage is 50 percent. At 192 square feet per cabin, on Lot 9 the coverage will be $192 \times 4 = 768 / 40,075 = 2\%$ coverage. On Lot 10, the lot coverage by the cabins will be $192 \times 2 = 384 / 70,567 = .05\%$ coverage. There is an existing home on the property which needs to be factored in to the total lot coverage. That footprint is not known, but to exceed coverage it would have to be a 35,000 square foot home. It is not. The maximum building height is 35 feet. These structures are far shorter than that.

D. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, numbers of persons, traffic volumes, off-street parking and loading facilities, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements.

Given the cabins are single rooms and 192 square feet, it can be anticipated at full capacity the volume of traffic each day will not exceed 12 vehicles (6 arriving and 6 departing). Most likely not more than 2-4 persons can be accommodated in each cabin. Maximum number of persons each day at full capacity could range at the low end 24 (12 arriving and 12 departing) to 48 (24 arriving and 24 departing). Lake View Drive is not an improved section of road, and may not be accessible in winter by emergency response vehicles. Mr. Swierk will be required to post notice in the cabins advising guests of this issue. Mr. Swierk will be required to submit a solid waste disposal plan. Mr. Swierk will be required to submit an update site plan showing off-street parking accommodations and on-site snow storage locations on the lots.

E. Community appearance, such as landscaping, fencing and screening, depending upon the specific use and its visual impact on the community. (Prior code § 30-43)

Staff is not recommending any landscape requirements associated with this permit.

17.50.030 Applications-Requirements.

A. A person intending to apply for a conditional use under this section shall submit the proposed project data to the community development department. The community development department shall contact the applicable agencies and utilities to allow them the opportunity to comment. The agencies to be contacted may include but not be limited to:

1. City public works department for water and sewer and snow removal;
2. City engineering department;
3. City building inspector;
4. State Highway Department, if applicable;
5. Local electricity utility;
6. City fire department;
7. Local telephone utility; and
8. Cable TV utility.

B. It is recommended that the application be accompanied by the following materials:

1. Narrative Documentation.
 - a. A legal description of all properties involved in the projects;
 - b. A statement of the objectives expected to be achieved by the project for the consumer and the public;
 - c. A detailed description of all aspects of the project, including land use, building types and sizes, population density, parking and traffic circulation, building coverage and other information which the applicant feels would assist the planning and zoning commission in making this decision; and
 - d. The community development department shall provide the proposed findings and conclusions for consideration by the planning and zoning commission. The proposed findings and conclusions will include comments and issues presented by the reviewing agencies along with a list of any unresolved issues.
2. Site Plans and Supporting Drawings.
 - a. As appropriate, details of the proposed project showing land use layout, building location, vehicular and pedestrian circulation, open space and recreation area, parking layout, schematic sewer and water layout, and any other information necessary to adequately describe the project;
 - b. A preliminary subdivision plat showing proposed lot and dedicated street layout;
 - c. A site grading and drainage plan including existing and proposed topography; and
 - d. Utilities. (Ord. 97-11 § 1: prior code § 30-44)

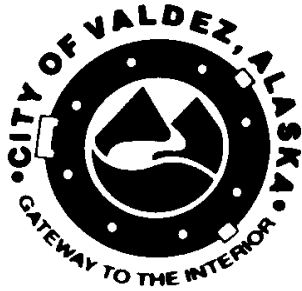
The public hearing notice was posted in the Valdez Star on March 2 and 9, 2016. Copies of the public hearing notice were mailed to property owners within a 300-foot radius on February 26, 2016. A public hearing was held on March 9, 2016. Adjacent property owners, Dean and Karen Cummings expressed concern and asked that the CUP be denied on the basis rental cabins are expressly prohibited by the subdivision covenants. At the meeting staff explained covenants are a private matter and the Commission may not take them into consideration when making a decision. However, to confirm, the City's land attorney was queried on this matter and confirmed staff's opinion on the matter. A copy of the attorney's letter is attached for the Commission's reference.

Two letters from the public (Cummings and an unknown person) against the permit are attached for the Commission to review.

Staff recommends in favor of the Conditional Use Permit with the following conditions:

1. Lot 9 is permitted for four (4) rental cabins, each 192 square feet in size and each self-contained with separate potable drinking water and sewer tanks.
2. Lot 10 is permitted for two (2) rental cabins, each 192 square feet in size and each self-contained with separate potable drinking water and sewer tanks.
3. Each cabin must be posted with a sign advising guests emergency response vehicles may not be able to access the property in the event of an emergency. Proof of posted signage must be provided to the Community Development Department annually.
4. Slope and soil stability and drainage conditions must be provided to the Community Development Department prior to the permit becoming effective.
5. A site plan showing off-street parking and on-site snow storage areas on the lots shall be provided to the Community Development Department prior to the permit becoming effective.
6. A solid waste disposal plan shall be submitted to the Community Development Department prior to the permit becoming effective.
7. A sewer waste disposal plan shall be submitted to the Community Development Department prior to the permit becoming effective.
8. Any changes to this permit regarding the size or number of cabins requires approval of the Planning & Zoning Commission by amendment to this permit.
9. In conformance with Section 17.06.070B Use Within Twelve Months Required. Any conditional use, variance or exception approved by the planning and zoning commission shall be conditional upon the privilege granted being utilized within twelve months after the effective date of the approval. In the event construction work is involved, it must actually commence within the stated period and must be diligently prosecuted to completion, otherwise the approval is automatically voided. The planning and zoning commission may extend the time the construction is to start if satisfactory evidence of planning progress is presented. Any substantial change to the plans or building

proposal shall require resubmission to the planning and zoning commission.



City of Valdez, Alaska
Planning & Zoning Commission
Conditional Use Permit
Proposed Findings & Conclusions

VMC Section 17.04.420 Conditional use.

“Conditional use” means a provision which allows for flexibility within this chapter by permitting certain specified uses in zoning districts where such uses are generally considered appropriate, but only after additional conditions and safeguards are applied to ensure their compatibility with permitted principal uses. (Ord. 03-15 § 1 (part); prior code § 30-8(b) (part))

Date: July 13, 2016
File No.: CUP #16-03
To: Planning & Zoning Commission
From: Lisa Von Barga
CUP: Rental Cabins

General Information

Applicant: Josh Swierk
Property Owner: Josh Swierk
Property Address: 5312 & 5318 Lake View Drive
Legal Description: Lots 9 & 10, USS 5670

PIDN: 56700090000 & 56700100000
Parcel Size: .92 Acres & 1.62 Acres
Zoning: Commercial Residential
Utility Service: Onsite Water & Sewer, CVEA Electric, CVTC or GCI Telephone, CGI Cable
Existing Land Use: Undeveloped & Residential
Access: Cummings Way to Lake View Drive
Surrounding Land Use: North: Residential & Lodge & Undeveloped
South: Residential & Undeveloped
East: Residential & Undeveloped
West: Residential & Undeveloped

Project Description and Background Summary

The City of Valdez received a request from Joshua Swierk for a Conditional Use Permit for the placement of four rental cabins on Lot 9, USS 5670 and two rental cabins on Lot 10, USS 5670. The property is currently zoned Commercial Residential (CR) and rental cabins are a conditional use within that zoning district (Section 17.26.040 (39) VMC).

Section 17.04.1235 defines rental cabins as, "...a single-family dwelling that does not exceed seven hundred square feet in total area and contains no more than one sleeping room or area, and is available for rent on a limited or long term basis." Mr. Swierk has provided information that the cabins are 12' x 16' is size, or 192 square feet. This is far below the maximum square footage allowed for a rental cabin.

There is currently a residential cabin (single family dwelling) existing on Lot 10 that was constructed prior to the purchase of the property by the current owner and this will not be used as one of the rental cabins. Mr. Swierk would like to place rental cabins on Lots 9 & 10 for the purpose of providing lodging for his growing business. Josh states that the rental cabins will be hill top lots with views of their existing lodge (Robe Lake Lodge).

At one point during the review of the application Mr. Swierk asked if he could pursue a combination permit for both rental cabins and an RV Park. The reason for this request is that Mr. Swierk's cabins are very similar to those cabins used at both Eagle's Rest RV Park and the Totem Inn. Mr. Swierk ultimately decided to move forward with the CUP for rental cabins only. In staff's opinion this is a good decision as the requirements for an RV Park are very cumbersome and it is possible the property might not be suitable to meet the minimum requirements. A copy of that email chain is attached to this agenda statement along with other items.

The following addresses the requirements of The Valdez Municipal Code, Section 17.50.020 for a CUP:

In considering the granting of a conditional use, the planning and zoning commission shall satisfy itself that the general criteria set forth for uses specified in this title will be met. The planning and zoning commission may consider any or all of the criteria listed in this section and may base conditions or safeguards upon them. The planning and zoning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. The general criteria for considering the conditions, if any, under which permission for a particular conditional use shall or shall not be granted in a district in which that use is specified in the district regulations are as follows:

A. Topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality, and the probable effects of the proposed conditional use upon these factors.

B. Utilities and services requirements of the proposed conditional use, including sewers, storm drainage, water, fire protection, access and electrical power; the planning and zoning commission may request the assistance of public officials with knowledge of the relevant public utility and service systems in evaluating the probable effects of the proposed use of public systems, and may consider the

costs of enlarging, upgrading or extending public utility or service systems for the proposed use in establishing conditions under which the use shall be permitted.

C. Lot or tract characteristics, including minimum lot size, minimum yard requirements, maximum lot coverage by all buildings or structures, and maximum height of buildings or structures.

D. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, numbers of persons, traffic volumes, off-street parking and loading facilities, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements.

E. Community appearance, such as landscaping, fencing and screening, depending upon the specific use and its visual impact on the community. (Prior code § 30-43)

Findings

The Director of Community & Economic Development shall make findings on an application for a conditional use permit. The Planning and Zoning Commission shall review and adopt the findings unless it finds by a preponderance of the evidence that the findings are in error. The director's findings are:

1. Is the requested permit proper according to the Conditional Uses for the zoning district?

Yes, in the Commercial Residential zoning district Rental Cabins is an allowed conditional use.

2. Is the application complete?

Yes. There are some additional site plan materials being required of the applicant prior to issuance of a permit including, soil stability and drainage and parking and snow removal.

17.50.030 Applications—Requirements.

A. A person intending to apply for a conditional use under this section shall submit the proposed project data to the Community & Economic Development Department. The Community & Economic Development Department shall contact the applicable agencies and utilities to allow them the opportunity to comment. The agencies to be contacted may include but not be limited to:

1. City public works department for water and sewer and snow removal;
2. City engineering department;
3. City building inspector;
4. State Highway Department, if applicable;
5. Local electricity utility;
6. City fire department;
7. Local telephone utility; and

8. Cable TV utility.

B. It is recommended that the application be accompanied by the following materials:

1. Narrative Documentation.

- a. A legal description of all properties involved in the project;
- b. A statement of the objectives expected to be achieved by the project for the consumer and the public;
- c. A detailed description of all aspects of the project, including land use, building types and sizes, population density, parking and traffic circulation, building coverage and other information which the applicant feels would assist the planning and zoning commission in making this decision; and
- d. The Community Development Department shall provide the proposed findings and conclusions for consideration by the Planning and Zoning Commission. The proposed findings and conclusions will include comments and issues presented by the reviewing agencies along with a list of any unresolved issues.

2. Site Plans and Supporting Drawings.

- a. As appropriate, details of the proposed project showing land use layout, building location, vehicular and pedestrian circulation, open space and recreation area, parking layout, schematic sewer and water layout, and any other information necessary to adequately describe the project;
- b. A preliminary subdivision plat showing proposed lot and dedicated street layout;
- c. A site grading and drainage plan including existing and proposed topography; and
- d. Utilities. (Ord. 97-11 § 1: prior code § 30-44)

3. Does the proposed development follow the other requirements of the City of Valdez land use code?

The land use code for the City of Valdez is Title 17 Zoning of the Valdez Municipal Code. This permit is being pursued in conformance with Title 17 as a Conditional Use Permit, and this is an allowable conditional use in the Commercial Residential Zoning District.

4. Will the proposed development materially endanger the public health or safety?

No.

5. Will the proposed project substantially decrease the value of or be out of harmony with property in the neighboring area?

This is a subjective question. The area is certainly more rural in nature, with larger lots and lends itself to rustic cabins. One of the first uses of the area was the Lake House B&B (now a private residence). And, the Swierks have Robe Lake Lodge on an adjacent property. Accommodations

have been, and are an existing use. The area also has amazing views and challenging topography which could lead to high-end architecturally developed homes, which don't yet exist in the area. Much of Valdez is a mix of housing/uses within the developed areas. The zoning is Commercial Residential, which outright allows for permitted uses as diverse as a pawn shop or frozen food locker, in addition to residential development. Given the wide range of allowable uses in the zoning district, the addition of rental cabins is in harmony with the surrounding area, especially given that much of it is undeveloped.

6. Will the proposed project be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

This question is more properly worded, "Will the proposed project be in general conformity with the Valdez Comprehensive Plan, or other officially adopted plans?" To staff's knowledge, the only plan governing this area is the Comprehensive Plan. As the request is in conformance with the existing zoning, it is in conformance with the Comprehensive Plan.

7. Are any of the following criteria such to materially endanger the public health or safety: topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality?

Prior to issuance of a permit the applicant will be required to submit a soil stability and drainage plan.

8. Will the proposed project require the enlargement, upgrading or extending of public utilities or service systems?

No.

Decision of the Commission

The Planning and Zoning Commission may, regardless of the above findings conditionally approve or deny the permit. The Commissioners' own independent review of information submitted at the public hearing and work meeting provides the basis for the decision. The decision needs supportive findings based on factors associated with the same questions answered in the Director's Findings.

Staff Recommendation

Staff recommends Conditional Use Permit #13-03 for Rental Cabins be approved by the Commission with the following conditions:

1. Lot 9 is permitted for four (4) rental cabins, each 192 square feet in size and each self-contained with separate potable drinking water and sewer tanks.

2. Lot 10 is permitted for two (2) rental cabins, each 192 square feet in size and each self-contained with separate potable drinking water and sewer tanks.
3. Each cabin must be posted with a sign advising guests emergency response vehicles may not be able to access the property in the event of an emergency. Proof of posted signage must be provided to the Community Development Department annually.
4. Slope and soil stability and drainage conditions must be provided to the Community Development Department prior to the permit becoming effective.
5. A site plan showing off-street parking and on-site snow storage areas on the lots shall be provided to the Community Development Department prior to the permit becoming effective.
6. A solid waste disposal plan shall be submitted to the Community Development Department prior to the permit becoming effective.
7. A sewer waste disposal plan shall be submitted to the Community Development Department prior to the permit becoming effective.
8. Any changes to this permit regarding the size or number of cabins requires approval of the Planning & Zoning Commission by amendment to this permit.
9. In conformance with Section 17.06.070B Use Within Twelve Months Required. Any conditional use, variance or exception approved by the planning and zoning commission shall be conditional upon the privilege granted being utilized within twelve months after the effective date of the approval. In the event construction work is involved, it must actually commence within the stated period and must be diligently prosecuted to completion, otherwise the approval is automatically voided. The planning and zoning commission may extend the time the construction is to start if satisfactory evidence of planning progress is presented. Any substantial change to the plans or building proposal shall require resubmission to the planning and zoning commission.

THOMAS E. MEACHAM
ATTORNEY AT LAW

ALASKA BAR NO. 7111032
1971

9500 PROSPECT DRIVE
ANCHORAGE, ALASKA
USA 99507-5924

TELEPHONE: 907/346-1077
FACSIMILE: 907/346-1028
tmeacham@gci.net

July 11, 2016

Ms. Lisa Von Bargen, Director
Community Planning and Development
City of Valdez
P. O. Box 307
Valdez, Alaska 99686

Re: Are Subdivision Covenants Enforceable as Municipal Zoning
Requirements?
Our File No. 157-1

Dear Ms. Von Bargen:

You have asked me on short notice to provide you with an answer to the above question, by your e-mail of July 8, 2016.

The apparent situation is this: A landowner is providing one or more rental cabins on his lot, located in an area of the City that permits such a use as a conditional use. However, the subdivision covenants that apply to the subdivision in question (by the implied consent of all landowners within this subdivision) prohibit rental cabins as an allowable use of the land within that subdivision.

The landowner in question has applied for the needed Conditional Use Permit for the rental cabin or cabins. A subdivision homeowner has requested that the City Planning and Zoning Commission deny the Conditional Use Permit application, on the basis of the prohibition against rental cabins that is contained in the subdivision covenants.

The question is whether the Planning and Zoning Commission may lawfully deny the Conditional Use Application on the basis of the prohibition contained in the subdivision covenants?

The short answer to this question is: No; the Planning and Zoning Commission may not lawfully do so.

There are two related reasons for reaching this conclusion. First, the City of Valdez has adopted a comprehensive planning and zoning code. Among the elements of this code is a provision allowing rental cabins in certain residentially-zoned areas, so long as a conditional use permit is applied for and obtained from the Planning and Zoning Commission.

If the subdivision covenant prohibition against rental cabins were to be recognized by the Commission as a valid reason to deny a Conditional Use Permit where one was otherwise allowable under the Code, the Commission would be in effect acting to recognize that a private contract has the effect of "amending" the duly-adopted provisions of the Valdez Municipal Code. Were this to occur, it would have potentially serious negative implications as to the role of the elected members of the Valdez City Council, who have the authority and duty to establish the building and zoning codes of the City through duly-enacted ordinances, after public notice and hearing.

If the Planning and Zoning Commission were to use the subdivision covenant prohibition as a reason to deny a Conditional Use Permit application, this would in effect be an *ad hoc* "amendment" of the City Code to "prohibit" a use that the enacted Code clearly allows.

The second, related reason that the Planning and Zoning Commission should not use the subdivision covenant as the reason to deny a Conditional Use Permit application is that subdivision covenants are, by their very nature, a private contract between all subdivision lot owners, with requirements and benefits that apply to all of those lot owners. The City of Valdez is not legally a party to that private subdivision contract, and it thus has no legal right or obligation to enforce its terms on any of the parties to that contract. This lack of any legal right would extend to "incorporating" a provision of the covenants as a requirement or prohibition of the municipal zoning code.

Even in a situation where a new subdivision applies for and receives municipal approval on condition that the lot owners adopt a body of protective subdivision covenants to enhance and maintain the living standards of the subdivision, the City would not be a party bound by any provisions that might be adopted by the subdivision's residents to meet this requirement.

Because subdivision covenants are a type of contract mutually accepted and agreed to by the residents as a condition of subdivision lot ownership, the only avenues for enforcement of this contract against an "offending" lot owner are by litigation, arbitration, or mediation. The subdivision covenants themselves (which I have not reviewed) may specify how disputes are to be resolved, but the City of Valdez has no role in this.

Ms. Lisa Von Bargen, Director
Community Planning and Development
City of Valdez
July 11, 2016
Page 3

Your enquiry also raised the question of a possible situation (not found here) where the subdivision covenants specify that a local government entity such as the Planning and Zoning Commission could enforce the covenants' land-use controls. Would this permit the Planning and Zoning Commission to prohibit rental cabins where the covenants prohibited them, but the City Code allowed them? I would also have trouble with this, for the reasons stated above. To carry out this possible covenant provision, the Commission would either have to be a legal party to the covenant contract, or would have to specifically accept this delegated duty; *i. e.*, it would need to agree to be substituted for a court or other decision-making body that would normally carry out such a duty.

A related issue, which was not raised by your inquiry, is whether the subdivision covenants could in effect "delegate" to the Planning and Zoning Commission the authority to set certain standards for the subdivision, through the general planning and zoning laws that are applicable city-wide. This would eliminate the need for the covenants to go into detail on these subjects. I see no problem if the subdivision lot owners would agree to a covenant provision like this, thus giving the Commission the authority to set applicable standards for a particular subdivision through requirements that apply to all subdivisions under the general planning and zoning laws.

It goes without saying that subdivision covenants may not legally set enforceable standards at a level lower than the standards applicable to the community generally, under the enacted planning and zoning ordinances. A subdivision covenant such as this would tie the subdivision to a level of standards that is no higher than in the community generally. If that is what the subdivision residents want, they could agree to this standard in their covenants. In such a case, any enforcement of these covenant provisions would be, in actuality, the enforcement by the Commission of existing requirements set by ordinance. If the Commission acted to enforce existing ordinances, it would not be "enforcing" the covenants but the ordinances instead; the fact that the covenants were identical in their terms to the ordinances would simply be a coincidence.

I hope that this letter responds adequately to the questions that you raised in your e-mail to me of July 8, 2016. If it does not, please let me know.

Sincerely yours,



Thomas E. Meacham



RECEIVED

FEB 11 2016

BY CITY OF VALDEZ
COMMUNITY DEVELOPMENT



CITY OF VALDEZ

FEE: \$50.00
SITE PLAN
(WAIVED 2013 PER
RESOLUTION #12-72)

APPLICATION FOR CONDITIONAL USE PERMIT

| | | | |
|--|--|------|---------|
| APPLICATION NUMBER | # 16-03 | DATE | 2/11/16 |
| NAME OF APPLICANT | Josh Swierk dba Swierk Enterprises | | |
| ADDRESS OF APPLICANT | P.O. Box 1126 | | |
| | Valdez, AK 99686 | | |
| DAYTIME PHONE | 907-831-2340 | | |
| SIGNATURE | | | |
| LEGAL OWNER | Swierk Enterprises LLC & Powderhouse LLC | | |
| ADDRESS | P.O. Box 1126 | | |
| | Valdez, AK 99686 | | |
| PHONE NUMBER | 907-831-2340 | | |
| STREET ADDRESS: | 5318 + 5312 Lake View Dr. | | |
| LEGAL DESCRIPTION: | U55 5670 Lot 9 + 10 | | |
| | Lot 9 (5318 Lake View Dr.) Lot 10 (5312 Lake View Dr.) | | |
| CURRENT ZONING | CR | | |
| PROVISIONS OF ZONING ORDINANCE REQUIRING A VARIANCE (I.E. SETBACK, LOT COVERAGE, ETC.) | | | |
| | | | |
| USE REQUESTED | Cabin Rental | | |
| TEMPORARY | HOW LONG | | |
| PERMANENT | <input checked="" type="checkbox"/> | | |

CUP# 16-03
Swierk-Cabin
Rentals

Please answer the following questions:

How will the proposed use conform to the present and future development of the area? What will be its effect on present and future development?

Currently used as rental property. Zoned CR

Why is there a need in the area for the Conditional Use requested? Wherever possible, substantiate this statement with factual data.

More rental accommodations needed in town and for our growing business.

Why is this site especially suited to the Conditional Use proposed?

Private hill top lots w/ views of our existing lodge and currently used as rental w/ existing cabin.

Why would the Conditional Use have no detrimental effects on surrounding property and uses?

Same use as our property adjacent to lots.

Attach or include any other information you feel is relevant to this application

Drawing of Lots 9 & 10 showing existing cabin plus 6 other cabins

Chapter 17.26 C-R COMMERCIAL RESIDENTIAL DISTRICT

Sections:

| | |
|------------------|---|
| <u>17.26.010</u> | Intent. |
| <u>17.26.020</u> | Permitted principal uses and structures. |
| <u>17.26.030</u> | Permitted accessory uses. |
| <u>17.26.040</u> | Conditional uses. |
| <u>17.26.050</u> | Prohibited uses and structures. |
| <u>17.26.060</u> | Minimum lot requirements. |
| <u>17.26.070</u> | Minimum setback requirements. |
| <u>17.26.080</u> | Maximum lot coverage of all buildings and structures. |
| <u>17.26.090</u> | Maximum height of buildings and structures. |
| <u>17.26.100</u> | Required off-street parking and loading. |
| <u>17.26.110</u> | Signs. |

17.26.010 Intent.

The C-R (commercial residential) district is intended to allow commercial and light industrial uses of land which do not detract from the residential use of the land by introducing excess noise, increased safety hazards, air pollution or water pollution. (Ord. 03-15 § 10 (part); prior code § 30-20(a))

17.26.020 Permitted principal uses and structures.

In a C-R zone, the following uses and structures are permitted outright:

- A. Barbershops and beauty salons;
- B. Drugstores;
- C. Fishing gear stores;
- D. Frozen food locker;
- E. Group care facilities;
- F. Gunsmiths;
- G. Locksmiths;
- H. Mobile homes;
- I. Private medical practices;
- J. Packaged alcohol sales;
- K. Pawnshops;
- L. Professional offices;
- M. Retail sales;
- N. Shoe repair and clothing alterations;

- O. Single-family homes;
- P. Small appliance and furniture repair;
- Q. Two-family dwellings (duplexes). (Ord. 03-15 § 10 (part): prior code § 30-20(b))

17.26.030 Permitted accessory uses.

In a C-R zone, the following uses, which are incidental to the permitted uses and structures listed in Section 17.26.020, are permitted:

- A. Accessory buildings in conjunction with a permitted or conditional use such as a private garage or workshop;
- B. Automobile parking in conjunction with a permitted or principal use;
- C. Home occupations;
- D. Private storage in yards of a truck up to two tons, one piece of heavy equipment, a boat, recreational vehicle, camper or travel trailer, provided they are separated at least ten feet from any property line;
- E. Small wind energy systems in conformance with Section 17.48.150. (Ord. 08-11 § 8: Ord. 03-15 § 10 (part): prior code § 30-20(c))

17.26.040 Conditional uses.

In a C-R zone, subject to the conditional use provisions of this title, the following uses and structures may be permitted:

- 1. Bakeries;
- 2. Boardinghouses;
- 3. Boat repair facilities;
- 4. Bowling alleys;
- 5. Child care centers;
- 6. Church services;
- 7. Churches and synagogues, along with customary accessory uses, including parsonages, day nurseries and meeting rooms;
- 8. Commercial cold storage;
- 9. Condominiums, townhouses, cluster housing and planned unit developments;
- 10. Contractor's storage yards;
- 11. Drinking establishments;
- 12. Eating establishments;
- 13. Food processing;
- 14. Grocery stores;

15. Laboratories;
16. Laundries;
17. Light manufacturing;
18. Lodges;
19. Machinery repair;
20. Meat processing;
21. Mechanical repair;
22. Mortuaries/funeral homes;
23. Motels;
24. Multifamily dwellings;
25. Paint, retail;
26. Pet shops;
27. Plumbing shops and yards;
28. Police and fire stations;
29. Public and private schools;
30. Quasi-institutional homes;
31. Recreational vehicle campground;
32. Sheet metal shops and yards;
33. Sign painting;
34. Stone cutting;
35. Tire sales;
36. Veterinarians and kennels;
37. Warehousing;
38. Woodshops and yards;
39. Rental cabins. (Ord. 03-15 § 10 (part); Ord. 97-13 § 1; prior code § 30-20(d))

17.26.050 Prohibited uses and structures.

A. In a C-R zone, any uses or structures not of a character indicated under permitted principal uses and structures or permitted as a conditional use are prohibited.

B. Any use which causes or may reasonably be expected to cause excessive noise, vibration, odor, smoke, dust or other particulate matter, toxic or noxious matter, humidity, heat or glare at or beyond any lot line of the lot on which it is located. "Excessive" is defined for these purposes as a

degree exceeding that generated by uses permitted in the district in their customary manner of operation, or to a degree injurious to the public health, safety, welfare or convenience. (Ord. 03-15 § 10 (part); prior code § 30-20(e))

17.26.060 Minimum lot requirements.

A. Lot width: fifty feet.

B. Lot Area. The minimum lot area is eleven thousand square feet and the area per dwelling unit shall be as follows:

| Minimum Lot Area | Number of Units |
|---|-------------------|
| 11,000 square feet | One to four units |
| Plus 1,500 square feet for each dwelling unit in excess of four | |

(Ord. 03-15 § 10 (part); prior code § 30-20(f))

17.26.070 Minimum setback requirements.

A. Front yard: twenty feet.

B. Side yard: ten feet.

C. Rear yard: fifteen feet.

D. Side yard where it abuts a residential zoning district: same as that required for the residential district.

E. Exceptions. Accessory structures, such as a workshop or storage shed, two hundred square feet or less, and not on a permanent foundation, may encroach into the rear and side yard setbacks only; provided, the structure is located on the back twenty-five percent of the parcel and is a minimum of five feet from both the rear and side lot lines.

1. If the setback is a dedicated utility easement the owner will be responsible for the relocation of the structure during utility maintenance, replacement or repairs. (Ord. 04-11 § 8; Ord. 03-15 § 10 (part); prior code § 30-20(g))

17.26.080 Maximum lot coverage of all buildings and structures.

Fifty percent. (Ord. 03-15 § 10 (part); prior code § 30-20(h))

17.26.090 Maximum height of buildings and structures.

A. Principal buildings and structures shall not exceed thirty-five feet in height, except as otherwise provided in this title.

B. Accessory buildings and structures shall not exceed thirty-five feet in height. (Ord. 03-15 § 10 (part); prior code § 30-20(i))

17.26.100 Required off-street parking and loading.

Adequate off-street parking and loading spaces shall be provided in connection with any permitted or conditional use in accordance with the requirements set forth in Sections 17.48.100 and 17.48.110. (Ord. 03-15 § 10 (part); prior code § 30-20(j))

17.26.110 Signs.

Signs may be permitted or allowed in conjunction with any permitted use subject to the provisions of Section 17.48.090. (Ord. 03-15 § 10 (part); prior code § 30-20(k))

The Valdez Municipal Code is current through Ordinance
1 -7 passed December 15 201 .
Disclaimer: The City Clerk's Office has the official version of the
Valdez Municipal Code. Users should contact the City Clerk's Office
for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.valdez.ak.us/>
(<http://www.ci.valdez.ak.us/>)
City Telephone: (907) 834-3408
Code Publishing Company
(<http://www.codepublishing.com/>)

VMC Chapter 17.06
Administration Sections Related to Conditional Uses

17.06.030 Planning and zoning commission—Conditional uses.

- A. Whenever it is stated in this chapter that certain buildings, structures and uses are permitted subject to approval by the planning and zoning commission, applications for such approval shall be made in writing and be accompanied by the required plans or data. These applications shall be submitted to the community development department for transmission to the planning and zoning commission.
- B. The planning and zoning commission shall make its findings and determination within sixty days from the date of filing an application and shall notify the applicant in writing of its decision. If approval is denied, the commission shall state its reason for denial.
- C. Failure of the planning and zoning commission to make a determination within the time specified shall advance the application to the board of adjustment. (Prior code § 30-55)

17.06.040 Conditional uses.

- A. Authority of Planning and Zoning Commission to Grant Commission. The planning and zoning commission shall hear requests or conditional uses in the various districts as specifically provided in this title, shall decide questions involved in determining whether permission for conditional uses should be granted and may grant permission with such conditions and safeguards as are appropriate this title or deny requests for conditional uses when not in harmony with the purpose and intent of this title and/or with the objectives of the comprehensive plan.
- B. Application. A request for conditional use under the regulations of this title may be filed by any property owner or authorized agent. The application must fully state any and all reasons justifying the granting of the request, including the features, details, schedule and timing of the proposed developments.
- C. Investigation. The planning and zoning commission shall cause to be made by its own members, or by its authorized representative, an investigation to determine that such uses will be in accordance with the comprehensive plan and will not be injurious to public health, safety or welfare, or detrimental to other properties or uses in the vicinity.
- D. Public Hearing—Granting or Denial. Within sixty days after the receipt of an application, the planning and zoning commission shall render its decision. If it is the finding of the commission, after consideration of the report of such investigation, that it is empowered under the provisions of this title to grant the request for conditional use and restrictions or conditions will be in accordance with the comprehensive plan and will not endanger the public health, safety or general welfare, or be inconsistent with the specific provisions and the general purpose and intent of this title, the commission may approve the application with or without conditions. (Prior code § 30-56)

17.06.060 Public hearings and notification requirements.

A. **Public Hearings.** The planning and zoning commission shall hold a public hearing upon each properly submitted application for a conditional use, variance or exception. Such hearing shall be held within sixty days following the date of filing of such application and the applicant shall be notified of the date of the hearing.

B. **Notification.** Notices required by this title shall include the date, time and location of the hearing, as well as the description of the action requested and the property for which the action has been requested. The names of the property owners and the parties filing the application shall also be included. The following notices shall be given:

1. A notice shall be posted and published. The notice shall be published at least once a week for the two consecutive weeks prior to the date of the public hearing in a newspaper of general circulation. The last date of publication shall not be less than three days before the date of the public hearing.

2. A notice shall also be sent by mail at least ten days prior to the public hearing to each owner of property within a distance of three hundred feet of the exterior boundary of the lot or parcel of land described in the application for the requested action.

C. **Consideration of Evidence.** The planning and zoning commission shall hear and consider evidence and facts from any person at the public hearing or written communication from any person relative to the matter. The right of any person to present evidence shall not be denied for the reason that any such person was not required to be informed of such public hearing. (Prior code § 30-58)

17.06.070 Effective date; required use of decision.

A. **Effective Date of Decision.** The decision of the planning and zoning commission, either for the granting, with or without conditions or the denial of an application for conditional use, variance or exception shall become effective immediately following the decision.

B. **Use Within Twelve Months Required.** Any conditional use, variance or exception approved by the planning and zoning commission shall be conditional upon the privilege granted being utilized within twelve months after the effective date of the approval. In the event construction work is involved, it must actually commence within the stated period and must be diligently prosecuted to completion, otherwise the approval is automatically voided. The planning and zoning commission may extend the time the construction is to start if satisfactory evidence of planning progress is presented. Any substantial change to the plans or building proposal shall require resubmission to the planning and zoning commission. (Prior code § 30-59)

17.06.080 Responsibility for processing and costs.

For all applications and appeals, the responsibility is upon the applicant or appellant to insure that all required actions have been taken. The applicant or appellant shall pay all costs and expenses related to the application or appeal. (Prior code § 30-60)

17.06.090 Schedule of fees, charges and expenses.

A. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

B. A fee of fifty dollars shall be paid upon the filing of an application for a zoning variance, zoning change, text amendments, exception or conditional use. **Fees are currently waived.**

C. The city shall be responsible for recording actions by the planning and zoning commission on zoning variances, zoning changes, text amendments, exceptions or conditional uses to the title record of the affected parcel(s). The applicant shall be responsible for payment of recording fees. (Ord. 07-13 § 1: prior code § 30-61)

Chapter 17.50 CONDITIONAL USES

Sections:

- 17.50.010 Generally.
- 17.50.020 Criteria to be considered.
- 17.50.030 Applications—Requirements.
- 17.50.040 Gravel extraction as a conditional use.
- 17.50.050 Applications—Processing.
- 17.50.060 Standards for planned unit developments.
- 17.50.070 Child care centers as a conditional use.

17.50.010 Generally.

Within Chapters 17.10 through 17.48, certain uses and structures are specified as conditional uses. These uses are generally compatible with the district in which they are specified, but are of such character that it is necessary to place additional conditions and safeguards upon these uses before permitting them to be developed within the district. The authority for granting permission or denying conditional uses rests with the planning and zoning commission as established by AS 29.33.080(d) and (e) and specified in Chapter 17.06 of this title. (Prior code § 30-42)

17.50.020 Criteria to be considered.

In considering the granting of a conditional use, the planning and zoning commission shall satisfy itself that the general criteria set forth for uses specified in this title will be met. The planning and zoning commission may consider any or all of the criteria listed in this section and may base conditions or safeguards upon them.

The planning and zoning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The burden of proof rests with the applicant. The general criteria for considering the conditions, if any, under which permission for a particular conditional use shall or shall not be granted in a district in which that use is specified in the district regulations are as follows:

- A. Topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality, and the probable effects of the proposed conditional use upon these factors.
- B. Utilities and services requirements of the proposed conditional use, including sewers, storm drainage, water, fire protection, access and electrical power; the planning and zoning commission may request the assistance of public officials with knowledge of the relevant public utility and service systems in evaluating the probable effects of the proposed use of public systems, and may consider the costs of enlarging, upgrading or extending public utility or service systems for the proposed use in establishing conditions under which the use shall be permitted.
- C. Lot or tract characteristics, including minimum lot size, minimum yard requirements, maximum lot coverage by all buildings or structures, and maximum height of buildings or structures.
- D. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, numbers of persons, traffic volumes, off-street parking and loading facilities, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements.

E. Community appearance, such as landscaping, fencing and screening, depending upon the specific use and its visual impact on the community. (Prior code § 30-43)

17.50.030 Applications—Requirements.

A. A person intending to apply for a conditional use under this section shall submit the proposed project data to the community development department. The community development department shall contact the applicable agencies and utilities to allow them the opportunity to comment. The agencies to be contacted may include but not be limited to:

1. City public works department for water and sewer and snow removal;
2. City engineering department;
3. City building inspector;
4. State Highway Department, if applicable;
5. Local electricity utility;
6. City fire department;
7. Local telephone utility; and
8. Cable TV utility.

B. It is recommended that the application be accompanied by the following materials:

1. Narrative Documentation.

- a. A legal description of all properties involved in the projects;
- b. A statement of the objectives expected to be achieved by the project for the consumer and the public;
- c. A detailed description of all aspects of the project, including land use, building types and sizes, population density, parking and traffic circulation, building coverage and other information which the applicant feels would assist the planning and zoning commission in making this decision; and
- d. The community development department shall provide the proposed findings and conclusions for consideration by the planning and zoning commission. The proposed findings and conclusions will include comments and issues presented by the reviewing agencies along with a list of any unresolved issues.

2. Site Plans and Supporting Drawings.

- a. As appropriate, details of the proposed project showing land use layout, building location, vehicular and pedestrian circulation, open space and recreation area, parking layout, schematic sewer and water layout, and any other information necessary to adequately describe the project;
- b. A preliminary subdivision plat showing proposed lot and dedicated street layout;
- c. A site grading and drainage plan including existing and proposed topography; and
- d. Utilities. (Ord. 97-11 § 1: prior code § 30-44)

17.50.040 Gravel extraction as a conditional use.

A. Gravel extraction outside of the HI-G heavy industrial, gravel extraction zone requires a conditional use permit. Zones that allow gravel extraction as a conditional use are the public lands zone, heavy industrial zone and the light industrial zone. In addition to meeting the requirements of Sections 17.50.010 through 17.50.030, an applicant for gravel extraction as a conditional use shall submit the following:

1. Site plan description, including:
 - a. Drainage,
 - b. Existing and proposed topographical contours (ten-foot contour),
 - c. Work depths,
 - d. Overburden and debris disposition,
 - e. Erosion and sediment control plan,
 - f. Revegetation or restoration plan,
 - g. Water table information,
 - h. Water quality information for work in waterways,
 - i. Floodplain alteration information for all work in the one hundred-year floodplain;
 2. Final site restoration and revegetation plan;
 3. Security plan to prevent casual trespass;
 4. Description of natural resource extraction and processing operations proposed for the site, including:
 - a. Ingress and egress points,
 - b. Hours of operation,
 - c. Estimate of quantities to be extracted and timetable, with supporting calculations conforming to generally accepted engineering principles;
 5. Other materials the director of community development may require.
- B. The planning and zoning commission may approve a gravel extraction conditional use only if the commission finds that the use meets the following standards:
1. The extraction operations will not pose a hazard to the public health and safety;
 2. The extraction operations will not generate noise, dust, surface water runoff or traffic that will unduly affect the surrounding land use;
 3. The permittee assures that after extraction operations cease, the site will be left in a safe, stable and aesthetically acceptable condition.

C. The planning and zoning commission shall attach such conditions to the approval of a gravel extraction conditional use permit as it finds are necessary to conform the use to the standards set forth in subsection B of this section. (Prior code § 30-44.1)

17.50.050 Applications—Processing.

Processing of an application for a conditional use shall be the primary responsibility of the planning staff and shall be carried out in accordance with the provisions set forth in Chapters 17.06 and 17.08 of this title. (Prior code § 30-45)

17.50.060 Standards for planned unit developments.

A. Purpose. Planned unit developments (PUDs) are intended to encourage the development of parcels of land as integrated units and to allow for flexibility of design. PUDs are allowed as conditional uses within a number of zoning districts and are applicable to either residential or nonresidential uses or a combination thereof.

B. Districts. Planned unit development is allowed in all districts except single-family residential, public and heavy industrial.

C. Preliminary Consultation. A preliminary consultation with the administrative staff and the planning and zoning commission may be held to determine conceptual plan requirements.

D. Concept Plan. In order to determine the possible acceptability of a proposed conditional use, the applicant shall prepare a preliminary concept plan for review by the city. The concept plan shall include the following information:

1. A legal description of the total site proposed for development, including a statement of present ownership.
2. A statement of planning objectives to be achieved by the PUD through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.
3. A proposed development schedule indicating the appropriate date when construction of the PUD or stages of the PUD can be expected to begin and be completed.
4. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the PUD such as land areas, dwelling units, etc.
5. Quantitative data for the following: total number and type of dwelling units; parcel size; proposed lot coverage of buildings and structures; approximate gross and net residential densities; total amount of open space (including a separate figure for usable open space); total amount of nonresidential construction (including a separate figure for commercial facilities).
6. The existing site conditions including contours at two-foot intervals, watercourse, floodplains, and any unique natural features.
7. Proposed lot lines and plot designs. The location and floor area size of all existing and proposed buildings, structures and other improvements including maximum heights, types of dwelling units, density per type and nonresidential structures. Preliminary architectural renderings of typical structures and improvements.
8. The location and size in acres or square feet of all areas to be conveyed, dedicated or reserved as common open space, public parks and recreational areas.

9. Existing and proposed automotive traffic circulation systems of major, collector and minor streets including off-street parking areas, service areas, loading areas, and major points of access to public rights-of-way including major points of ingress and egress to the development.
10. Existing and proposed pedestrian circulation systems.
11. Existing and proposed utility systems, including sanitary systems, storm sewers, water, electric, telephone and television cable lines.
12. A general landscape plan indicating the treatment of materials to be used for private and common open spaces.
13. The proposed treatment of the perimeter of the PUD, including materials and techniques to be used such as screens, fences and walls.
14. The proposed snow removal plan including description of storage or removal of snow.
15. Any additional information may be required by the review authority necessary to evaluate the character and impact of the proposed PUD.

The staff shall review the applications to determine their completeness. If adequate information is available to allow for planning and zoning commission review, the application will be placed on the commission agenda as a conditional use request. The conditional use request requires notification of adjacent landowners and a public hearing.

E. Final Plan.

1. Upon receipt of a PUD final plan, the community development department shall review and prepare a recommendation for action by the planning and zoning commission on the PUD plan. The administration shall give consideration to the conformance of the final plan to the concept plan as well as the criteria governing conditional uses. The final plan shall be filed within one year of concept plan approval. Extensions may be granted by the planning and zoning commission.
2. Before the final plan is approved by the planning and zoning commission, a preliminary subdivision plat may be prepared to be considered in conjunction with the final plan.
3. The final plan shall include all information and maps submitted for the concept plan in their finalized, detailed form. This includes site plans sufficient for recording and detailed engineering drawings, including contours at two-foot intervals. In addition, a statement of methods to be employed to assure maintenance of any common areas and facilities shall be submitted.
4. Upon receipt of the administrative review and recommendation, the planning and zoning commission shall establish a finding that the final plat is consistent with the conditional use, or that it is inconsistent.
5. In the event it is determined that the final plan is consistent with the approved conditional use, the planning and zoning commission shall approve the final plan with the modifications or conditions.
6. If the conditional use application is approved with modifications, the applicant shall proceed with preparation of a final plan. A final plan shall be filed within one year of concept plan approval. Plans shall be prepared by professionals qualified in appropriate fields.

7. If it is determined that the final plan is inconsistent with the approved concept plan, the planning commission shall set a public hearing date, shall give notice, and provide an opportunity to be heard to each of the following:

- a. Any person who is on record as having appeared at the public hearing on the concept plan;
- b. Any other person who has indicated to the planning commission in writing that they wish to be notified. After the public hearing, the planning commission shall approve or disapprove the new conceptual plan.

F. Residential PUDs.

1. **Qualifying Conditions.** Public water and sewer facilities or approved on-site facilities shall be available or shall be provided as part of the site development.

2. **Permitted Uses.** The following uses of land and structure may be permitted within a residential PUD:

- a. Residential uses including cluster development, duplex, multiplex condominium and townhouse dwelling units.
- b. Other uses permitted or conditionally permitted within the zoning district in which it is located.

3. **Density.**

- a. Maximum project ground floor area shall not exceed forty percent of the gross land area.
- b. Total open area shall be at least one hundred ten percent of the total ground floor area.
- c. Open area shall not include areas used for parking or maneuvering incidental to parking and vehicular areas or any other structures.

4. **Common Open Space.**

- a. All or a portion of the open area may be set aside as common open space for the sole benefit, use and enjoyment of present and future residents of the development.
- b. For any areas to be held under common partnership, a document showing the future maintenance provisions shall be submitted to the planning commission. These provisions shall include mandatory membership of all property owners in any association designed for maintenance of the common area.

5. **Perimeter Requirements.** If topographical or other barriers do not provide adequate privacy for uses adjacent to the PUD, the planning commission may impose one or both of the following requirements:

- a. Structures located on the perimeter of the planned development must be set back a distance sufficient to protect the privacy of adjacent uses.
- b. Structures on the perimeter must be permanently screened by a fence, wall or planting.

6. **Dimensional Requirements.** Dimensional requirements may be varied from the requirements of the district within which the PUD is located. All departures from those requirements shall be evaluated against the following criteria:

Lot Width. A minimum lot width is intended to prevent the construction of long, narrow buildings with inadequate privacy, light and air. There are situations as in cul-de-sacs, steep slopes or offset lots where, because of lot configuration or topography, narrow or irregular lots provide the best possible design. Where the design is such that light, air and privacy can be provided, especially for living spaces and bedrooms, a narrower lot width may be permitted.

G. Commercial PUDS.

1. Qualifying Conditions.

- a. The PUD site shall have direct access to an arterial street, collector or major thoroughfare.
- b. Utilities, roads and other essential services must be available for the immediate use of occupants purchasing sites in the PUD.
- c. The proposed PUD will be developed with a unified architectural treatment.

2. Permitted Uses. All uses permitted within the district for which the PUD is requested.

3. Requirements. If topographical or other barriers do not provide adequate privacy for uses adjacent to the PUD, the planning commission may require that one or both of the following requirements be met:

a. Structures located on the perimeter of the planned development must be back a distance sufficient to protect the privacy of adjacent users.

b. Structures on the perimeter must be permanently screened by a fence, wall or planting.

4. Dimensional Requirements. Setbacks and distances between buildings within the development shall be at least equivalent to that required by the zoning district in which the PUD is located unless the applicant demonstrates that:

a. A better or more appropriate design can be achieved by not applying the provision of the zoning district;

b. Adherence to the requirements of the zoning district is not required in order to ensure health, safety, and welfare of the users and inhabitants of the development.

H. Standards for Townhouses. Townhouses may be conditionally permitted if the following requirements are met:

1. A detailed development plan is submitted with the application for a conditional use, including a site plan drawn to scale. The site plan shall include but shall not be limited to the topography and drainage of the proposed site, the location of all buildings and structures on the site, courts and open space areas, circulation patterns, ingress and egress points, parking areas (including the total number of parking spaces provided) and a general floor plan of the principal buildings, together with such other information required by the planning commission.

2. No more than one townhouse project shall be located any closer than three hundred feet to another townhouse project unless otherwise approved by the planning commission.

3. Minimum lot width of twenty-eight feet for an individual townhouse project unless otherwise approved by the planning commission.

4. Minimum lot area for each townhouse unit shall be two thousand square feet and the townhouse project must conform to the following:
 - a. Total first floor area shall not exceed forty percent of the lot area;
 - b. Total open area shall be at least one hundred ten percent of the total floor area;
 - c. Open area, if provided, shall not include areas used for parking or vehicular access;
 - d. Parking space area shall be provided at the minimum rate of two spaces per dwelling unit exclusive of traffic lanes in parking lots, and street dedications.
5. Each townhouse unit shall have a total yard area containing at least seven hundred square feet. Such total yard area may be reduced to five hundred square feet if common open or common recreational area, not including parking spaces, is available for each unit.
6. Minimum setbacks for townhouse developments shall adhere to the setback requirements of the zoning district within which it is located. (Ord. 05-12 § 7; prior code § 30-46)

17.50.070 Child care centers as a conditional use.

A. Child care centers requiring a conditional use permit must show evidence of being capable of meeting the following criteria:

1. All current state of Alaska day care center license requirements.

B. Child care center conditional use permits may be conditionally approved once capability to meet all criteria is evident. Child care center conditional use permits will become effective only upon receipt of a state of Alaska child care center license and so long as the state of Alaska child care license remains valid.

C. Child care center conditional use permits are nontransferable. (Ord. 02-04 § 2)

The Valdez Municipal Code is current through Ordinance 14-7, passed December 15, 2014.

Disclaimer: The City Clerk's Office has the official version of the Valdez Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.valdez.ak.us/>
(<http://www.ci.valdez.ak.us/>)
City Telephone: (907) 834-3408
Code Publishing Company
(<http://www.codepublishing.com/>)



**For the best experience, open this PDF portfolio in
Acrobat X or Adobe Reader X, or later.**

[Get Adobe Reader Now!](#)

VI.1

3-9-16 P&Z Meeting

hand-cut @ meeting

March 8, 2016

RECEIVED

MAR 09 2016

BY CITY OF VALDEZ
COMMUNITY DEVELOPMENT

5:00pm

City of Valdez
Community and Economic Development Department
Planning and Zoning Commission
P.O. Box 337
Valdez, AK 99686

RE: CUP for 6 Rental Cabins on Lot 9 and Lot 10, USS 5670

Dear Planning and Zoning Commission,

It has been brought to my attention that Josh Swierk has applied for a Conditional Use Permit for 6 rental cabins in addition to the house between Lot 9 and Lot 10, USS 5670.

As the Swierks are aware, Lot 9 and Lot 10 are subject to the same restrictive covenants that their Lot 8, USS 5670 is subject to. These restrictive covenants were incorporated into the purchase agreement for the land, as well as incorporated into the deed in accordance with Alaskan law. There are a number of restrictive covenants that are applicable to this permit. For your reference, I have enclosed a copy of the Grant of Easements & Declaration of Restrictive Covenants that contains these restrictions and was recorded with the Valdez Recorder's Office.

In particular, I draw your attention to Section 3.3 "Limits on Structures" which states:

Development of any of Lots 5,6,8,9, and 10 shall be limited to a principal residence consisting of one (1) detached single-family dwelling and, to the extent permitted by applicable building codes, one detached cabin or cottage or attached apartment together with such structures and outbuildings as are commonly and customarily appurtenant thereto (i.e. garages, gazebos, etc.) ... To the extent that any of Lots 5, 6, 8, 9 or 10 are greater than one point five (1.5) acres in area, for each additional half acre development of that Lot may include an additional cabin, cottage or guest house.

The application for the CUP states Mr. Swierk intends to build six cabins. As you can see, pursuant to this restrictive covenant he is permitted to build only 1 cabin on Lot 10 as it is only 1.62 acres in size and only 1 cabin on Lot 9 as it is only .92 acres in size.

In addition, Section 3.4 entitled "Commercial Uses Prohibited" limits the use of Lot 8, Lot 9 and Lot 10 to residential purposes. It states:

Use of Lots 5, 6, 8, 9 and 10 shall be limited to residential purposes. For the purposes of these covenants, but subject to restrictions as may be applicable under applicable under law, the following uses shall be considered permissible as residential purposes: (i) principal and/or secondary residence; (ii) short or long-

term rental of any single family dwelling, cottage or apartment; ... Notwithstanding the foregoing Lots 5, 6, 8, 9 and 10 shall not be used to operate any retail business including a store, lodge, restaurant, tavern, bed and breakfast, kennel, wholesale distribution service, manufacturing facility or other, similar use.... [emphasis added]

It is clear from the restriction that while you may build the cabins for short or long-term rentals, you may not operate a lodge, tavern or bed and breakfast on the premises or use them for any other commercial purpose.

In addition, in Section 5, each of the owners of Lots 5, 6, 8, 9 and 10 are responsible for all roadway improvements necessary to access their own lot. Additional traffic would likely cause significantly quicker degradation of the roadway, which the Swierks would be responsible for. The Swierks have never paid anything toward the roadway improvement. As land owners in this subdivision they are responsible for shared assessment of the cost of roadway improvements required to obtain acceptance by the city. The Swierks have an outstanding invoice from 2013 of \$83,934.00 for their portion of the costs. A copy of the invoice is enclosed. Not only did they not contribute to improving their access, Josh Swierk made building these improved roads to this property more costly (Repeatedly damaging our material and equipment and excavated 2 feet of road bed with a backhoe from our property), time-consuming and stressful (constantly making false police reports and threatening violence towards Dean and our employees. Josh even pointed a rifle at Dean once while Dean was working to remove snow for a neighbor as requested.)

Furthermore The Swierk's do not currently comply with City regulations and codes. They have placed structures and signs on right-of-ways and City easements, their large shop is an illegal structure, was built without a building permit, does not meet set back and height requirements and sheds snow on our property. They have illegally operated a B&B without living on the premises, and they do not have a coded compliant septic system enabling Robe Lake B&B waste or grey water to drain onto our property. The hillside in which the B&B is built has sloughed away and the building is close to falling off. See attached photo. The deck is already sinking because it is not built on code required compacted soil. Their business practices follow suit with the most recent infraction on February 27, 2016, Black Ops illegally uses H2O branded terms in their ad text on Google that we have paid a lot of money for. This is the 2nd time in the last 2 months they were notified of this violation. Last year, Black Ops outlandishly defamed H2O Guides by posting on a popular skiing and snowboarding website that we were going out of business, but still taking people's money. This is not only damaging to us, but damaging to how the world views Valdez. Enclosed is a copy of the screenshot. We are constantly having to police these wrongdoers. It is exhausting to work so hard to do things the right way, be compliant, follow code, City and State law, pay the money and contribute to our community only to have the City not take action, enforce code, and be so lenient with the Swierks. Doesn't the City understand that allowing the Swierks to operate and develop their property and business non-compliantly hurts our business and family? The City is culturing an environment for bad business and has created an unfair trade act situation allowing Robe Lake Lodge and Black Ops to

damage H2O Guides and the Cummings family. Why would the City even consider granting these lawbreakers CUP's to build more illegal cabins? Please don't continue to allow the Swierks to systematically break laws and develop their property and business non-compliantly.

The restrictive covenants were imposed on the land for the benefit of all landowners to ensure that the subdivision maintains its original character. It appears from his application for the Conditional Use Permit that Josh Swierk is intending to develop this land in a manner that would contradict the restrictive covenants. We are bringing this to your attention now in the hope that you will not approve his request or application and that the City of Valdez take corrective action and enforce failure to meet codes and regulations.

Concerned Citizens and Stakeholders in Valdez,

Karen and Dean Cummings

Enclosures (5)

Grant of Easements & Declaration of Restrictive Covenants

This Grant of Easements (the "Easements") and Declaration of Restrictive Covenants (the "Covenants") is made by **Dean Cummings and Karen Cummings**, husband and wife (including any successor owners of Lot 7, "Declarants"), is acknowledged and agreed to by **Van S. Kitagawa**, a single man ("Kitagawa") and is effective as of the date of recordation (the "Effective Date") in the land records of Valdez Recording District, Third Judicial District, State of Alaska.

1. Subdivision. Declarants are the owners of Lot Three "B" (3B), USS 5670, as shown on the official plat thereof filed under Plat No. 79-9, 2000-14, Valdez Recording District, Third Judicial District, State of Alaska, (the "Property"). Declarants have received approval for re-zoning and subdivision of the Property as shown on a survey of the Property was prepared by CERCO Engineering of Valdez, Alaska on or about the 30th day of August, 2002 as file No. A:\USS5670 and titled: "SUBDIVIDE LOT 3B, USS 5670 INTO LOTS 5, 6, 7, 8, 9, 10 USS 5670; LOT 2A INTO 2B USS 5670 SEC. 21, T9S, R5W, C.R.M.; VALDEZ RECORDING DISTRICT" (the "Plat of Subdivision" and the lots, as shown on the Plat of Subdivision is each a "Lot", individually designated by its number). The Plat of Subdivision was recorded on the ____ day of _____, 2003 as Plat Number _____ in the land records of Valdez Recording District, Third Judicial District, State of Alaska.

2. Easements. Declarants hereby grant the following easements:

2.1 Road Easements. For the benefit of Lots 1A, 1B, 1C, 2A, 5, 6, 7, 8, 9 and 10, and any lots resulting from further subdivision of those Lots in conformity with the Covenants and applicable laws, an easement for ingress, egress and utilities across and upon all that land identified upon the Plat of Subdivision as: "60' Utility and Access Easement" (the "Road Easements"). The Road Easements shall be subject to the right of the Declarants to dedicate and/or convey the areas within the Road Easements to the City of Valdez, provided that such city (or other political subdivision) agrees to accept responsibility for maintaining roadways within the Easements.

2.2 Recreation Access. For the benefit of Lots 5, 6, 8, 9 and 10, and any lots resulting from further subdivision of those Lots in conformity with the

Covenants and applicable laws, and any lots resulting from further subdivision of Lot 7, an easement for pedestrian only access upon a foot path not more than ten (10) feet in width across Lots 7 and 8 providing access to Robe Lake, generally following a line designated as "Recreation Access Easement" on Exhibit A, hereto. The owners of any of the estates burdened by Recreation Access Easement shall have the right to relocate the easement within their property provided that they bear the expenses of relocation and reconstruction of any pathway improvements and that the easement continues to provide reasonable pedestrian access to Robe Lake (access in the relocated easement may be upon a roadway or driveway).

- 2.3 Recreational Use. For the benefit of the owners of Lots 5, 6, 8, 9 and 10, and any lots resulting from further subdivision of those Lots and Lots 7 and 8 in conformity with the Covenants and applicable laws, together with their guests and invitees, an easement for leisure/recreation use of lakefront area along Robe Lake upon Lot 7 along a strip of land thirty (30) feet in width beginning at the westerly property boundary of Lot 7 and extending eastward along legs A, B, C and D (the Recreation Area) as shown on the Plat of Subdivision. Leisure/recreational use shall not include the right to construct improvements upon the Recreation Area without the express written consent of the owner of Lot 7, which consent may be withheld at the sole discretion of such owner. Any improvements that may be approved by the owner of Lot 7 shall be maintained by the Association (as defined below) or the party constructing them. The owner of Lot 7 may impose reasonable rules and restrictions upon use of the Recreation Area, and with respect to the maintenance of any allowed improvements, to protect the environment of that area, and protect its reasonable business interests. The owner of Lot 7 may elect to relocate the Recreation Area to another shoreline location within Lot 7 and in such event shall provide such easements as may be reasonably necessary for the owners of Lots 5, 6, 8, 9, and 10 to reach the Recreation Area.

3. Use Restrictions.

- .1 Further Subdivision. Provided that no resulting lot may be smaller than one point five (1.5) acres, and that any resulting lot shall be subject to these covenants, Lots 5, 6, 8, 9 and 10 may be subdivided, combined and/or re-divided.
- .2 Residential Lots Resulting From Subdivision of Lot 7. Should the owner

of Lot 7 determine to divide that property and such resulting lots are designated by the subdivider to be for residential purposes only, the resulting residential lots shall be subject to the same restrictions under these covenants as Lots 5, 6, 8, 9 and 10.

- .3 Limits on Structures. Development of any of Lots 5, 6, 8, 9 and 10 shall be limited to a principal residence consisting of one (1) detached singlefamily dwelling and, to extent permitted by applicable building codes, one detached cabin or cottage or attached apartment, together with such structures and outbuildings as are commonly and customarily appurtenant thereto (i.e. garages, gazebos, etc). For the purposes of these Covenants, a "cabin", "cottage" or "apartment" shall mean a dwelling with not more 1500 square feet of inside floor area designed for occupancy by a single family unit. To the extent that any of Lots 5, 6, 8, 9 or 10 are greater than one point five (1.5) acres in area, for each additional half acre, development of that Lot may include an additional cabin, cottage or guest house.
- .4 Commercial Uses Prohibited. Use of Lots 5, 6, 8, 9 and 10 shall be limited to residential purposes. For the purposes of these covenants, but subject to restrictions as may be applicable under law, the following uses shall be considered permissible as residential purposes: (i) principal and/or secondary residence; (ii) short or long-term rental of any single family dwelling, cottage, cabin or apartment; (iii) any home occupation not employing more than two persons in addition to the resident and not regularly involving simultaneous visits by more than two customers or clients. Notwithstanding the foregoing, Lots 5, 6, 8, 9 and 10 shall not be used to operate any retail business including a store, lodge, restaurant, tavern, bed and breakfast, kennel, wholesale distribution service, manufacturing facility or other, similar use. Upon the express, written consent of the Declarants, any of Lots 5, 6, 8, 9 or 10 may be used as a base of operations for commercial tour or guide services. Except as may be limited by a written agreement between the Declarants and the owner of any of Lots 5, 6, 8, 9 or 10, consent may be given, refused and/or revoked at the sole and absolute discretion of the Declarants.
- .5 Use of Lot 7. Nothing herein shall limit the use of Lot 7 for any purpose for which it may otherwise be legally used.
- .6 Noxious Activities. Each of Lots 5, 6, 8, 9 or 10 shall be kept to a

reasonable standard of hygiene and appearance. No dumps, uncontained trash or other, similar hazards shall be permitted. None of Lots 5, 6, 8, 9 or 10 shall be used so as to create a nuisance or for other purposes which unreasonably limit the quiet enjoyment of any other Lot within the Property. Without limitation, a nuisance shall include any activity or omission which produces unreasonable noise levels or odors. The owners of Lots 5, 6, 8, 9 and 10 may keep reasonable pets, but not exceeding three each of dogs and/or cats. No farm animals, (for example, chickens, ducks, cows, pigs, goats, sheep, etc), zoo animals or typically wild animals may be kept on Lots 5, 6, 8, 9 or 10. Up to two horses may be kept on any of Lots 5, 6, 8, 9, or 10. Additional horses may be permitted provided that the population of horses on any of Lots 5, 6, 8, 9 or 10 does not exceed one per acre. Not more than one inoperable motor vehicle may be kept on any of Lots 5, 6, 8, 9 or 10.

4. Building Restrictions. Development of Lots 5, 6, 8, 9 and 10, and any lots resulting from further subdivision of those Lots shall be subject to the following restrictions:

- .1 Application. No structure shall be erected, placed or maintained on 5, 6, 8, 9 or 10, except as provided herein.
- .2 Height. No principal residence shall exceed a maximum height of thirty-eight (38) feet from the lowest point of the undisturbed surface of the ground at the perimeter of the structure, at any point. No structure other than a principal residence shall exceed a maximum height of thirty-two (32) feet from the lowest point of the undisturbed surface of the ground at the perimeter of the structure, at any point.
- .3 Prefabricated Structures. No mobile homes shall be permitted, except as a construction office for a period of not more than eighteen (18) months. Prefabricated homes and structures shall be permitted, provided that they otherwise comply with these covenants.
- .4 Exteriors. The exterior of all structures shall be completed within eighteen (18) months from the date construction is commenced. The exterior walls of all structures shall be constructed of wood

siding, wood shingles or color coated stucco. Vinyl siding, aluminum siding, asphalt shingles, unfinished plywood, tarpaper and similar materials shall not be permitted. Exterior wall and trim colors shall be white, earth tones or natural, stained wood. Unfinished concrete or block siding shall not be permitted, except within 36 inches of ground level.

4.5 Antennae. No antenna, radio tower or other similar structure greater than 24 feet in height shall constructed or maintained, except as may be attached to a structure and, in that case, it shall not extend more than 10 feet above the highest point of said structure. No television or other communications dish shall exceed 48" in diameter, unless screened from view from all other residences within the Property.

4.6 Buffer Zones. Areas within twenty-five (25) feet of property boundaries shall be considered "Buffer Zones." No structures shall be placed within the Buffer Zones, except upon Lots 9 and 10, (to compensate for their smaller size, irregular shape and topography). Within Buffer Zones, except at points of ingress and egress, Property owners shall make reasonable efforts to avoid removing existing trees (except that some trees may be removed to enhance lake views) and shall either maintain natural landscaping or replace natural landscaping with other appropriate landscaping so as to maintain reasonable privacy between lots. No chain link, barbed wire or stockade fences may be placed in buffer zones. Other fences within buffer zones shall be not more than 66" in height.

5. Roads and Maintenance.

.1 Initial Improvements. Each of the owners of Lots 5, 6, 8, 9 and 10 shall be responsible for all roadway improvements necessary to access their own lot.

.2 Dedication Expenses. In the event the Declarants dedicate and/or convey the areas within the Road Easements to the City of Valdez, and provided that such city (or other political subdivision) agrees to accept responsibility for maintaining the roadways within the Road Easements, each of the owners of Lots 5, 6, 7, 8, 9 and 10 (and any Lots resulting from re-subdivision of any of them) shall

be assessed a share of the cost of those improvements and any incidental expenses required to obtain acceptance of the dedication by the City, in proportion to percentage of land benefited, represented by each Lot.

- .3 Association. There shall be an association of the owners of Lots 5, 6, 7, 8, 9 and 10 (the "Association") for the purposes of maintaining roadways (and any community utilities) within the Road Easements, the footpaths within the Recreation Access Easement and the Recreation Area described in sections 2.1, 2.2 and 2.3 above. Votes among association members shall be allocated according to the number of acres of land owned within the Property, with an additional vote being allocated for a partial acre greater or equal to one-half.
- .4 Cost Allocations. Costs for maintenance and improvements shall be allocated among the owners of Lots according to shares, to be determined as follows:

| <u>VALUE</u> | <u>S H A R E</u> |
|--|------------------|
| For each acre of land owned: | 1 |
| For a residence: | 2 |
| For each additional Cabin or Apartment: | 1 |
| For a restaurant and lodge (up to 10 bedrooms), retail or other establishment upon Lot 7: | 4 |
| For each 5 additional bedrooms (or any portion thereof), whether in a lodge or in separate rental units, including cottages or cabins, upon Lot 7: | |

2

The total cost of maintenance and improvements shall be divided by the total number of shares and allocated to each Lot owner by the number of shares applicable to his or her lot. The owner of Lot 7 may elect not to participate in the costs of maintaining the Recreation Area and/or the pathways by affirmatively electing, in writing, to waive the right of Lot 7's owners to use those improvements. For the purposes of determining share values, the first inhabitable structure upon a Lot shall be considered to be a

residence, without regard to the size of same.

- 5.5 Governance. The Association shall adopt by-laws governing meetings, maintenance of bank accounts, awarding of maintenance and improvement contracts and other matters consistent with these Covenants. Upon a majority vote, the Association may elect to form a legal entity (i.e. non-profit association or similar organization) for the purposes of conducting the affairs of the Association.

6. Effect of Covenants. These covenants shall benefit and run with the land and, except as set forth in Section 7 below, may not be amended, revoked, suspended or removed except upon the express, written consent of the owners of not less than seventy-five percent (75%) of the votes allocated to Association members. Although these covenants may bestow an incidental benefit upon the owners of the owners of adjacent land, no right of enforcement in favor of the owner of such land is intended or implied.

7. Accessions and Lot Line Adjustments.

- .1 Accessions. With the consent of the owners of same, by formal, written declaration, the Declarants may make lands contiguous to the Property, and lands contiguous to those lands, (collectively, the "Additional Lands") subject to these Covenants. At the discretion of the Declarants, in the declaration, the Additional Lands may be exempted from all or any portion of these Covenants. In such declaration, the owners of the Additional Lands (the "Additional Landowners") may, at the discretion of the Declarants, be granted use of any or all of the Easements. To the extent that the Additional Landowners are granted rights to use the Easements, they shall be required to become members of the Association and shall share in the costs of maintaining the improvements as set forth in Section 5.4. The Additional Landowners shall not be required to share in the costs of maintaining improvements upon any Easement upon which they are not granted a right of use. Although the Additional Landowners may be granted a right to use the Recreation Area and such right shall include a responsibility to share in the costs of maintaining that area, any improvements within it and the costs of maintaining any improvements within the Recreation Access Easement, that right of use shall not cause such Additional Landowner to be assessed for the costs of maintaining the roadways within the Road Easements unless

such party has been granted a right of ingress and egress to his/her property through the Road Easements.

- .2 Lot Line Adjustments. Whether as part of an accession of Additional Lands under Section 7.1 above or through lot line adjustments or other changes within the Property, the Declarants may add lands to Lot 7 and such lands shall then become subject to these Covenants as they apply to Lot 7.

In witness whereof, Dean Cummings and Karen Cummings have executed this Declaration of Restrictive Covenants as of the Effective Date.

Dean Cummings

Karen Cummings

Date: _____

Date: _____

Acknowledged and Agreed to:

Van S. Kitagawa

Date: _____

Acknowledgments

State of Alaska)
) ss.
Third Judicial Department)

This instrument was acknowledged before me on _____, 2003 by Dean Cummings.

Notary Public: _____

My Commission Expires: _____

State of Alaska)
) ss.
Third Judicial Department)

This instrument was acknowledged before me on _____, 2003 by Karen Cummings.

Notary Public: _____

My Commission Expires: _____

State of Alaska)
) ss.
Third Judicial Department)

This instrument was acknowledged before me on _____, 2003 by Van Kitagawa.

Notary Public: _____

My Commission Expires: _____

Todd Timmer

RO Search Menu | Name Search | Date Search | Document Number Search | Document Type Search | Book and Page Search | Historic Book Search | Plat Number Search | Survey Search | MTRS Search | Subdivision Search | No Plat Subdivision Search | Doc.Input/UnverifiedStatus

Recorder's Office - Documents by Name

Document(s) for: CUMMINGS KAREN

District: 318 - VALDEZ

Next Document Number: 2001 - 001190 - 0

New Search

Rece email/ Definitely by Monday 3 docs \$4.25

Search Hint - To narrow down your search: Highlight the above data field(s) and insert new value(s).

| | | |
|--|---------------------------|---------------|
| Type of Document: STAT WARRANTY DEED | Index: D - DEEDS | |
| Date Recorded: 11/09/2001 | Doc.Number: 2001-001190-0 | District: 318 |
| Grantee | Book: 147 Page: 156 | |
| First Grantor : KITAGAWA VAN S | | |
| Type of Document: DEED OF TRUST | Index: M - MORTGAGES | |
| Date Recorded: 11/09/2001 | Doc.Number: 2001-001191-0 | District: 318 |
| Grantor | Book: 147 Page: 157 | |
| First Grantee : LAND TITLE COMPANY OF ALASKA INC | | |
| Type of Document: RIGHT-OF-WAY EASEMENT | Index: MS - MISCELLANEOUS | |
| Date Recorded: 10/30/2002 | Doc.Number: 2002-001036-0 | District: 318 |
| Grantor | Book: 151 Page: 852 | |
| First Grantee : COPPER VALLEY ELECTRIC ASSOCIATION INC | | |
| Type of Document: GRANT OF EASEMENTS & DECLARATION OF REST | Index: MS - MISCELLANEOUS | |
| Date Recorded: 06/13/2003 | Doc.Number: 2003-000574-0 | District: 318 |
| Grantor | | |
| First Grantee : KITAGAWA VAN S | | |
| Type of Document: STAT WARRANTY DEED | Index: D - DEEDS | |
| Date Recorded: 07/01/2003 | Doc.Number: 2003-000644-0 | District: 318 |
| Grantor | | |
| First Grantee : EATON ALEXANDER B | | |
| Type of Document: STAT WARRANTY DEED | Index: D - DEEDS | |
| Date Recorded: 08/06/2003 | Doc.Number: 2003-000767-0 | District: 318 |
| Grantor | | |
| First Grantee : HUBER PAUL | | |
| Type of Document: RIGHT-OF-WAY EASEMENT | Index: MS - MISCELLANEOUS | |
| Date Recorded: 10/21/2003 | Doc.Number: 2003-001102-0 | District: 318 |
| Grantor | | |
| First Grantee : COPPER VALLEY ELECTRIC ASSOCIATION INC | | |
| Type of Document: PARTIAL DEED OF RECON | Index: M - MORTGAGES | |
| Date Recorded: 01/26/2004 | Doc.Number: 2004-000065-0 | District: 318 |
| Grantee | | |
| First Grantor : LAND TITLE OF ALASKA INC | | |
| Type of Document: DEED OF TRUST | Index: M - MORTGAGES | |
| Date Recorded: 06/22/2004 | Doc.Number: 2004-000443-0 | District: 318 |
| Grantor | | |
| First Grantee : GMAC MORTGAGE CORPORATION | | |

| | | |
|--|---------------------------|---------------|
| Type of Document: WARRANTY DEED | Index: D - DEEDS | |
| Date Recorded: 10/28/2004 | Doc.Number: 2004-000766-0 | District: 318 |
| Grantor | | |
| First Grantee : SWIERK JOSHUA | | |
| Type of Document: DEED OF TRUST | Index: M - MORTGAGES | |
| Date Recorded: 11/12/2004 | Doc.Number: 2004-000820-0 | District: 318 |
| Grantee | | |
| First Grantor : SWIERK JOSHUA | | |
| Type of Document: DEED OF RECON | Index: M - MORTGAGES | |
| Date Recorded: 10/26/2006 | Doc.Number: 2006-000732-0 | District: 318 |
| Assoc.Doc: 2001-001191-0 | | |
| Grantee | | |
| First Grantor : LAW OFFICES OF BIXBYFRANCIOSI P C | | |
| Type of Document: AMENDMENT TO GRANT OF EASEMENTS & DECLAR | Index: MS - MISCELLANEOUS | |
| Date Recorded: 12/19/2007 | Doc.Number: 2007-000974-0 | District: 318 |
| Assoc.Doc: 2003-000574-0 | | |
| Grantor | | |
| First Grantee : TO WHOM IT MAY CONCERN | | |
| Type of Document: DEED OF TRUST | Index: M - MORTGAGES | |
| Date Recorded: 05/05/2009 | Doc.Number: 2009-000323-0 | District: 318 |
| Grantor | | |
| First Grantee : FIRST NATIONAL BANK ALASKA | | |
| Type of Document: DEED OF RECON | Index: M - MORTGAGES | |
| Date Recorded: 07/26/2011 | Doc.Number: 2011-000483-0 | District: 318 |
| Assoc.Doc: 2004-000443-0 | | |
| Grantee | | |
| First Grantor : EXECUTIVE TRUSTEE SERVICES LLC | | |
| Type of Document: PLAT | Index: PL - PLAT | |
| Date Recorded: 12/13/2011 | Doc.Number: 2011-000771-0 | District: 318 |
| Grantor | | |
| First Grantee : ROBE LAKE WILDERNESS ESTATES | | |

All Documents have been displayed

[Back](#)

UCC documents are shown as "active", "inactive" or "lapsed". UCC-1 filings will show "active" for five years along with any subsequent amendments. If it is not continued in the designated time within that five year period, the status changes from "active" to "lapsed" for one year. After that one year period as "lapsed", the status changes to "inactive".

(Please Note: A "Wildcard" reference means the filing does not tie to an "active" filing; and, a filing shown as "active" does not necessarily mean effective.)

Documents are entered in nonsequential batches. Temporary document number gaps may exist in current data.

If you identify a possible indexing error (typo, reversed names, etc) or can not locate the record you are trying to find please Contact Us

All documents are provided as a public service for your convenience. Updates and corrections occur on a daily basis; however, the State of Alaska shall not incur any liability for errors or omissions with respect to the information provided on this web site.

[Recorder's Office Home Page](#) | [UCC Central Home Page](#) | [Dept.of Natural Resources Home Page](#)

Last updated on 07/19/2013.

Have a question about the Recorders Office? Please contact [your district office](#).

CONTRACT FOR SALE OF REAL PROPERTY
VALDEZ, ALASKA

1. SALE. For and in consideration of payment of the sum of set out below, together with the mutual covenants and agreements contained herein, Dean Cummings and Karen Cummings, husband and wife (the "Sellers"), whose address is 714 N. Snowtree, [P.O. Box 2501], Valdez, Alaska, agree to sell and Joshua Swierk, an unmarried man, whose address is P.O. Box 88 Greenbush, ME 04418 and Tabitha Bolduc an unmarried woman, whose address is P.O. Box 88 Greenbush, ME 04418, ("Buyers"), agree to buy, the following described real estate located in the state of Alaska:

Lot 8 as shown on that certain Plat of Subdivision recorded in Valdez Record District on the 10th Day of April, 2003 as Document Number 2003-2 and titled:

A portion of Lot Three "B" (3B), USS 5670, as shown on the official plat thereof filed under Plat No. 2000-14, Valdez Recording District, Third Judicial District, State of Alaska, equal to 3.39 acres, as shown on a survey that was prepared by CERCO Engineering of Valdez, Alaska on or about the 30th day of August, 2002 as file No. A:\USS5670 and titled: "SUBDIVIDE LOT 3B, USS 5670 INTO LOTS 5, 6, 7, 8, 9, 10 USS 5670; LOT 2A INTO 2B USS 5670 SEC. 21, T9S, R5W, C.R.M.; VALDEZ RECORDING DISTRICT" (the "Plat of Subdivision").

The described 3.39 acre parcel is hereafter referred to as the "Property." A copy of the Plat of Subdivision is annexed hereto as Exhibit A.

2. PURCHASE PRICE. The purchase price is the sum of \$60,000 payable as follows:

- a. \$5,000 down payment (~~due upon execution of this Contract~~); and
(shall be wire transfered within one business day of this contract)

DC JS KC 1 TB

b. \$10,000 due September 1, 2004 (to be paid, in escrow, to Title Company of Alaska at: ^{LAURA WITH} Land Title Company of Alaska Inc. ^{3150 C St. Anchorage, AK 99503} Suite 220, and

c. \$20,000 at closing on October 1, 2004; and (907) 770-8626

d. Under a real estate contract ("Real Estate Contract"), the entire principal balance of \$25,000 shall be due in monthly payments of \$800 payable the first of each month beginning November 1, 2004 and ending May 1, 2005. A balloon payment will be due June 1, 2005 of \$19,400. The down payment shall be delivered directly to Sellers and Sellers shall have full right of access to and use of the funds from the down payment.

3. COVENANTS AND EASEMENTS. The Property is subject to covenants (the "Covenants") which:

a. Create an association to maintain the roadway described on the Plat of Subdivision and Buyers (and their successors in title) shall become a member of such association.

b. Grant Buyer a right of access to Robe Lake along areas described by legs a, b, c and d (or other reasonably equivalent areas which may be substituted by Sellers) as shown on the Plat of Subdivision by pedestrian trail, but subject to such reasonable restrictions as the owners of Lot 7, or their successors may from time-to-time issue.

In addition, the Property shall be made subject to addition easements (the "Additional Easements") for ingress and egress as marked on Exhibit A.

4. CONTINGENCIES. The obligations of Buyer and Sellers to close this transaction shall be contingent upon the following:

a. Buyer's approval of the Covenants, and such approval shall not be unreasonably withheld;

b. Buyer's approval of placement of the Additional Easements, which shall not differ materially from Exhibit A; and

c. Buyer's approval of a title report for the Property, which approval shall not be unreasonably withheld.

5. CLOSING. Closing shall occur on or before October 1, 2004. At Closing, Seller shall deliver to the Title Company (or other mutually agreed upon escrow agent): (a) Warranty Deed for the Property, to be held in escrow, pending Buyers' delivery of all payments due under the Real Estate Contract and (b) an executed original Real Estate Contract, in conformance with the terms hereof. At Closing, Buyers shall deliver to the Title Company (or other mutually agreed upon escrow agent): (a) Special Warranty Deed and Termination of Real Estate Contract (both to be delivered to Seller in the event of Buyer's default under the Real Estate Contract) and (b) an executed original Real Estate Contract, in conformance with the terms hereof. In the event that Buyer properly rejects, in writing, to the Covenants, final Plat of Subdivision or title report and Sellers are unable to resolve Buyers' basis for objection within thirty (30) days, Buyers shall be entitled to terminate this Contract and receive a prompt refund of the down payment and September 1 payment. Sellers may require Buyers to execute a formal termination of contract prior to refund of the down payment.

6. CONVEYANCE. Upon Buyer's payment of all sums of money due under this Contract in conformance with the terms of the Real Estate Contract, the Warranty Deed shall be released by the Title Company (or other Mutually Agreed Upon escrow agent) to the Buyers, conveying the Property in fee simple with covenants of warranty, excepting from such warranty only:

- a. The Covenants;
- b. All conditions contained within the final Plat of Subdivision;
- c. The Additional Easements
- d. Any matters disclosed by the title report and not objected to by Buyers; and
- e. All matters of record, including applicable laws and ordinances.

7. TITLE INSURANCE. Buyers have the right to obtain title insurance at their own expense and are encouraged to do so. Within fifteen (15) days of execution of this Contract (the "Effective Date"), Sellers shall provide Buyers with an abstract of title, title binder or other form of title report (the "Title Report") showing all matters of record affecting title to the property. Within ten (10) business days thereafter, Buyers shall provide Sellers a written statement of objections, if any, to matters disclosed by the Title

Report. Within five (5) business days thereafter, Sellers shall reply to the Buyers' objections indicating what actions, if any, Sellers will take to resolve the objections. If any objection is not resolved, Buyers may choose to continue with the transaction, thereby waiving their objections or to terminate this Contract and the Sellers shall refund the down payment have no further obligations to the other.

8. SURVEY. The Plat of Subdivision shall show no gaps, overlaps, deviations, incursions, rights of way, easements or other matters affecting the property not acceptable to Buyer. Within five (5) business days of receipt of same, Buyer shall provide Sellers a written statement of their objections, if any, to matters disclosed by the Plat of Subdivision. Within five (5) business days thereafter, Sellers shall reply to the Buyers' objections indicating what actions, if any, Sellers will take to resolve the objections. If any objection is not resolved, Buyers may choose to continue with the transaction, thereby waiving their objections or to terminate this Contract and, save for Sellers' obligation to refund Buyer's down payment, the Buyers and Sellers shall have no further obligations to the other.

9. SUCCESSORS. This Contract shall be binding upon and shall inure to the benefit of the heirs and successors in interest of the parties hereto.

10. COSTS. Sellers shall bear all costs of associated with identifying the Additional Easements on the Warranty Deed or placing same on a Survey Plat. Buyers shall bear the costs of any additional survey as they may be required to separately survey the Property, if same be required by Buyer or a title insurer. Sellers shall bear the costs of the preliminary title report or abstract of title. Buyers shall bear the costs of title insurance, all costs of recording the Warranty Deed and the Real Estate Contract. Buyers shall bear the costs of Escrow Set-Up and Monthly Payment Fees. Each party shall bear its own legal costs. Buyers and Sellers shall evenly divide the Title Company's closing fees.

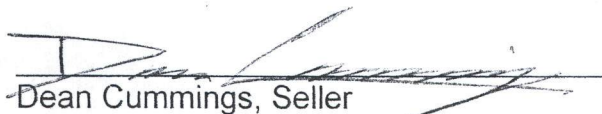
11. MISCELLANEOUS. Buyer and Sellers shall each work diligently and in good

faith to meet all requirements under this Contract. All objections by Buyer to matters in the Title Report, Covenants and Plat of Subdivision shall be reasonable. Any objection not made within the time period specified shall be deemed waived. The phrase "business days" as used herein shall mean Monday through Friday, but excluding legal holidays and, for counting purposes, shall exclude the date of an occurrence or the date of receipt of a document. Facsimile copies of this Contract shall be deemed binding as originals. This Contract may be executed in separate counterparts.

In Witness Whereof, the Buyers and Sellers have signed and delivered this Agreement in duplicate on this 19th day of August, 2004.


Karen Cummings, Seller

8/26/04
Date


Dean Cummings, Seller

8/26/04
Date


Joshua Swierk, Buyer

8-19-04
Date


Tabatha Bolduc, Buyer

8-19-04
Date

ROBE LAKE WILDERNESS ESTATES

INVOICE

Date: December 6, 2013

Attention:

Josh and Tabitha Swierk
P.O. Box 1126
Valdez, AK 99686

Project title: Roadway Improvements.

Project description: Pursuant to the covenants recorded May 2003 section 5, Lot 8 land owners responsible for shared assessment of the cost of roadway improvements required to obtain acceptance by the city.

Invoice Number: 12062013

Terms: 30 Days

| DESCRIPTION | QUANTITY | SHARE VALUE | COST |
|--|----------|-------------|--------------|
| \$429,000 cost / 46 total shares = \$9,326 per share | | | |
| For each acre of land owned | 3 | 1 | \$ 27,978.00 |
| For a residence | 1 | 2 | \$ 18,652.00 |
| For each additional cabin or apartment | Unknown | 1 | \$ 0.00 |
| For a restaurant, lodge, retail or other establishment | 1 | 4 | \$ 37,304.00 |
| For each 5 rooms in a lodge greater than 10 | 0 | 2 | \$ 0.00 |
| | | | |
| TOTAL DUE | | | \$ 83,934.00 |

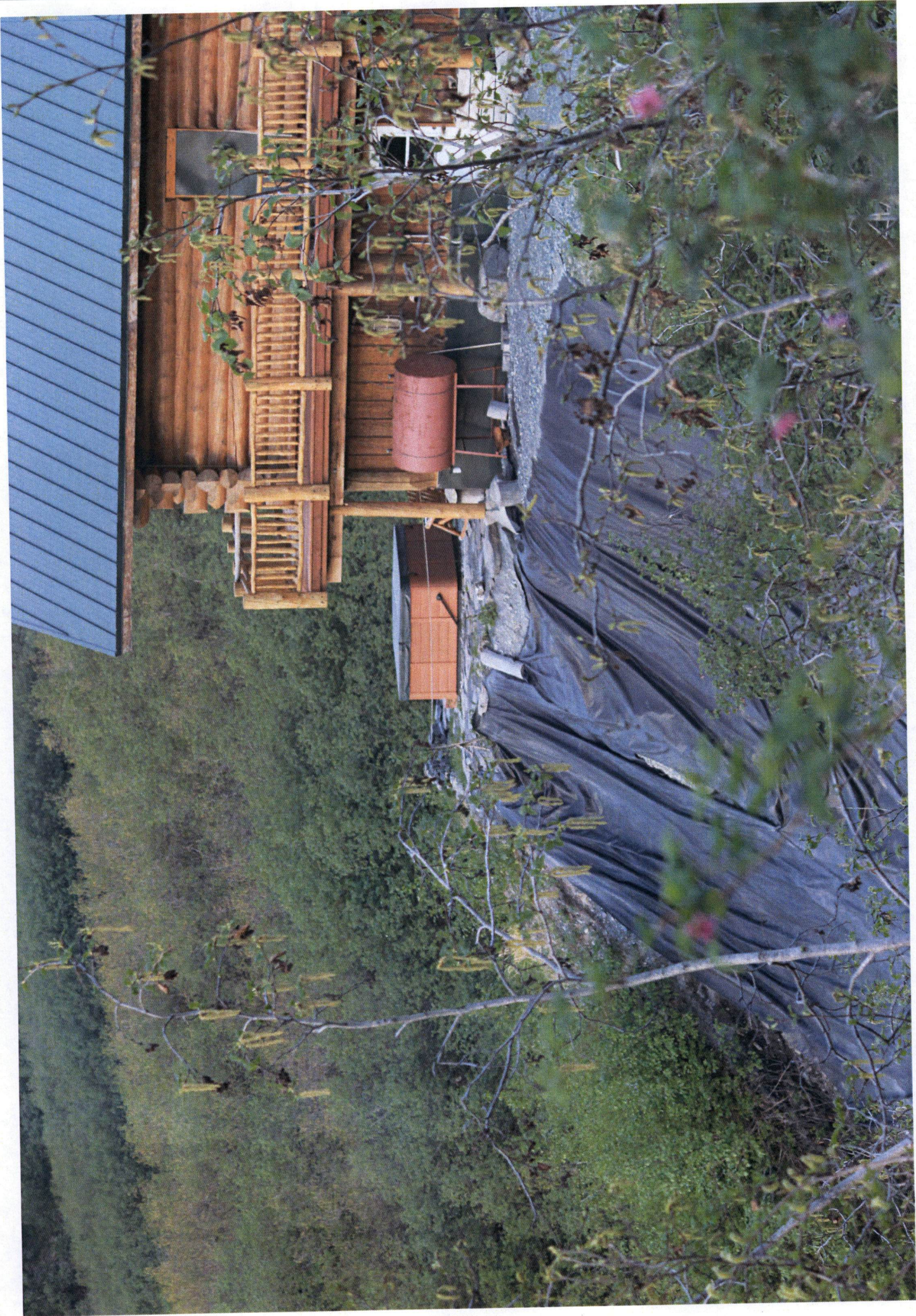
Submit payment to:

Karen and Dean Cummings P.O. Box 2501, Valdez, AK 99686

Sincerely yours,

Karen Cummings

RLWE HOA Committee Member







if I updated - YouTube | Dean Cummings' Snowboard | Home | Display | Index (334) | Cummings | Hel Ski Op Rumors in Valdez AK

www.tetongravity.com/forums/showthread.php?p=280627-Hel-Ski-Op-Rumors-in-Valdez-AK

Thursday, 05 Oct 2016 #1

Black Ops Valdez
Registered User

Join Date: Sep 2014
Location: Valdez, AK
Posts: 27

You've been warned
[Watch Video](#)

HEL SKI OP RUMORS IN VALDEZ, AK

Hello TGR community,

We have heard a lot of rumors going around about a heli accident in Valdez last winter, some people think it was us. The story is this: A snowboarder got out of the helicopter, with the main rotor blades still spinning, and got his board out of the basket, raised it up above his head, due to high stoke levels, and hit the main rotor with his snowboard. Believe it or not, the helicopter illegally flew out of the zone with a damaged rotor. That decision put everyone at risk just to avoid a costly eval. Just wanted to clarify that the accident occurred with Dean Cummings's HQo Guides, and NOT Black Ops Valdez.

HQo took a big financial hit after that accident, (a new rotor blade costs about 200k) and we have herd talk about them not participating in the 2015 heli season. Dean is selling all his gear, and the guides that we are friends with do not know what is going on, or if they will have a job for next year. HQo is still taking reservations, and more importantly taking peoples' money. I know HQo has been around for a long time, and the thought of them leaving the industry is absurd, but we are putting it all together and it seems they might not be around when people show up to go heli skiing this spring. Alaska Snowboard Guides is the same way, there is talk that they might not be in operation this year, but are still taking reservations and prepayments.

This has happened before with Matt White and Valdez Heli Camps(VHC). The Alaska Heli Ski Business is just like any business. People will cheat you, take your money, and not think twice about it. It's a sad thing, but it is reality.

If you want to go heli skiing this year in AK, book with someone who is trust worthy, like AK Rendezvous, VHSQ, AK Heli Skiing, or maybe even Black Ops. Happy Winter.

@blackopsvaldez

HANDCRAFTED Powder & Touring Skis

4FRNT Built by Skiers, for Skiers.

CHOOSE THIS SEASON'S CHOC

RECEIVED

MAR 07 2016

BY CITY OF VALDEZ
COMMUNITY DEVELOPMENT

Valdez resident
Valdez, AK 99686

Mar3,2016

City of Valdez
P.O. Box 307
Valdez, AK 99686

To: Community & Economic Development Department

Subject: comments on Josh Swierk CUP request for cabins on Lot 9
&10 USS 5670

We are against this thought of this landowner doing any more building at this time with out getting an occupancy permit to live on this property since purchasing it,we believe one was never gotten because of it being incomplete. The terrain in this area will be a downfall for any building done, these lots are not easily built on. He has cleared many areas on their previous lot owned along with building cabins there. Are they all up to all codes?

When we had done a cabin on our property in the area it was demanded of us that it conform to all building codes and be hooked up to sewer.

If you notice the drawing with the location of the road to access the property, the driveway crosses lot 9 along with the well to get to lot 10. This was not on the original as-built to get to lot 10. so instead of correcting the problems of previous owners and the building deptment allowing ,like first eliminating the lot line between them to correct it.

To install sewers that meet DEC & work properly take a great deal of effort. How is this many cabin hookups going to effect the current sewer system?

Again we are against this idea till some of these items are address.We are leaving it as a public comment for retaliation could forthcome.

Respectfully,
Valdez resident



Keri Talbott

From: Thomas E. Meacham [tmeacham@gci.net]
Sent: Monday, August 29, 2016 10:53 AM
To: Lisa Von Bargaen
Cc: AnnMarie Lain; Keri Talbott
Subject: Re: Question re CUP application

Importance: High

Lisa,

I believe that unless the Valdez Codes of Ordinances ties the approval of a CUP application to the “good conduct” of an applicant’s past performance regarding building or zoning requirements on another, separate parcel of property, then the P&Z Board must consider the CUP application on its own merits, and entirely separate from any other allegation of zoning or building violations.

From what you have written, it sounds as if the allegations of building violations on other properties owned by the CUP applicant are allegations only, and are not proven violations confirmed by a City agency that has the authority to make such determinations.

Even if these were proven violations, there would have to be a link in the Code between existing violations on unrelated property and the consideration and possible approval of an entirely separate CUP application on other property, for the City to have a legal basis deny the CUP permit, or to add conditions that are requested by a person’s claim arising from a separate parcel not involved in the CUP application.

I hope that this responds adequately to your inquiry.

Best wishes,

Tom Meacham

+++

On Aug 28, 2016, at 5:49 PM, Lisa Von Bargaen <lvonbargaen@ci.valdez.ak.us> wrote:

Tom,

We have an applicant for a conditional use permit in Valdez. An adjacent property owner has asked the Commission to deny the permit or add conditions to the permit for alleged building violations on an adjacent parcel also owned by the applicant. Our contention is the enforcement of that property is a wholly separate issue from this CUP. The Commission has asked for legal confirmation this is correct. True to my form I need an answer tomorrow morning if that is humanly possible. I am out of the office on leave so please copy the other two staff I have copied on this email. As always, thank you very much.
Lisa



Agenda Statement

File #: 16-0061 **Version:** 1

Type: New Business **Status:** Second Reading

File created: 8/5/2016 **In control:** Planning and Zoning Commission

On agenda: 8/31/2016 **Final action:**

Title: (Rezone #16-06) Approve Recommendation to City Council to Authorize the rezone of Tracts 2 & 3, Alpine Village, from Multi-Family Residential (RC) to Tract 2 Commercial Residential (CR) and Tract 3 Light Industrial (LI). Applicant: Dwain Dunning

Sponsors:

Indexes:

Code sections:

Attachments: [Dunning REZONE_FC_08_19_16_FINAL.pdf](#)
[Rezone Application 16-06 Dunning.pdf](#)
[Dunning letter from 1988.pdf](#)
[Hickel Letter.pdf](#)
[residential letter PZ USS 3323 may 17 2016.pdf](#)

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------------------------|-----------------------------|--------|
| 8/10/2016 | 1 | Planning and Zoning Commission | introduced on first reading | |

ITEM TITLE:

(Rezone #16-06) Approve Recommendation to City Council to Authorize the rezone of Tracts 2 & 3, Alpine Village, from Multi-Family Residential (RC) to Tract 2 Commercial Residential (CR) and Tract 3 Light Industrial (LI). Applicant: Dwain Dunning

SUBMITTED BY: Keri Talbott, Planning Technician

FISCAL NOTES:

Expenditure Required: N/A
Unencumbered Balance: N/A
Funding Source: N/A

RECOMMENDATION:

Approve the Recommendation to City Council to Authorize the Rezone of Tracts 2 & 3, Alpine Village, from Multi-Family Residential (RC) to Tract 2 Commercial Residential (CR) and Tract 3 Light Industrial (LI).

SUMMARY STATEMENT:

The City of Valdez received a request from Dwain Dunning on July 18th, 2016 for a Rezone of Tracts 2 & 3, Alpine Village, 4671 Richardson Highway. The land is currently zoned Multi-Family Residential and Mr. Dunning would like to rezone Tract 2 to Commercial Residential and Tract 3 to Light Industrial. Mr. Dunning is proposing to put in a primary marijuana cultivation facility on Tract 3. The Light Industrial zoning district is not

compatible with the neighboring property currently zoned, and being used for multi-family residential purposes. The purpose of this rezone request is to change the zoning of Tract 2 to be compatible with both Multi-Family and Light Industrial while acting as a buffer between the two.

In 1988, the owner of Tract 3 applied to rezone the tract from Multi-Family (RC) to Light Industrial (LI). In a letter to the applicant dated July 5, 1988, the Commission denied the rezone request stating that a more appropriate zoning would be Commercial Residential (CR). Multi-Family (RC) district is intended to include lands for urban development that are provided with public utilities or intended to be provided with public facilities in the future. Neither public water nor public sewer has been extended to service this area

Below is a summary of the intent of the different zoning districts contemplated under this proposed amendment.

17.18.010 Intent

The R-C (multiple-family residential) district is intended to include lands for urban development which are provided with a full range of public utilities, including sewers, water, electricity and street drains or are intended to be provided with such facilities in the future. This district is intended primarily for single and multiple residences at moderately high population densities. Structures are required to serve governmental, educational, recreational, religious and limited commercial needs are allowed subject to permitted or conditional use restrictions intended to preserve and protect the residential character of the R-C district.

The intent of the proposed zoning district as stated in Valdez Municipal Code is outlined below:

(Tract 2)

17.26.010 Intent.

The C-R (Commercial Residential) district is intended to allow commercial and light industrial uses of land which do not detract from the residential use of the land by introducing excess noise, increased safety hazards, air pollution or water pollution.

(Tract 3)

17.36.010 Intent.

The L-I (Light Industrial) district is intended for light industrial development including light manufacturing, processing, warehousing, storage, wholesale and distribution operations, and similar processes and operations. Limited commercial uses and accessory residential uses are allowed in the L-I district to serve the uses for which the district is primarily intended.

The Comprehensive Plan offers goals and objectives that provide guidance on general land use, economic development, commercial-business land use, and industrial land use. Only those relevant to the specific zoning change are listed below.

Goal - Land Use: Provide a community land use pattern that is compatible with existing land use patterns in the community, which is physically safe, environmentally sensitive, and consistent with the provisions and requirements of the Valdez Coastal Management Program.

Objective - Provide for the adequate separation of incompatible land uses.

The immediate surrounding land to the North is vacant land and under management authority by the City of Valdez as Municipal entitlement land. The other lot adjacent to Tract 2 is zoned Multi-Family Residential. By rezoning Tract 2 to Commercial Residential as the Commission suggested in 1988, the applicant is placing a buffer between the Multi-Family residential district and the proposed Light Industrial District.

Objective - Provide development standards for lands that require special physical or environmental attention before they can be safely used or developed.

Goal - Industrial Land Use: Provide for industrial land uses so that they limit impacts on adjacent land uses and the environment, and yet have safe and convenient access to the major transportation facilities they require.

Objective - Encourage the consolidation of industrial land use activities.

Objective - Provide buffers between industrial and other land uses as a means to restrict the hazardous and/or nuisance aspects of industrial uses.

Mr. Dunning is proposing to rezone Lot 2 from Multi-Family Residential to Commercial Residential as a means of having a zoning district in between the existing multi-family housing and Tract 3 which he wants to rezone as Light Industrial for the purpose of developing a commercial marijuana cultivation operation.

Objective - Control undesirable air and water emissions of industrial land uses.

2.5.1 Land Use Policies.

Light Industrial Areas - These areas have been set aside to provide for those less noxious industrial uses that require good access to major transportation facilities or breaks in transportation but do not require a waterfront location.

Neighborhood Commercial Areas - These areas are meant to provide convenience goods (e.g., a 7-11 type store) outlets for individual neighborhoods. These areas thus limit lengthy and/or unnecessary trips to the more specialized commercial areas located in the town center for the many items that households need frequently.

Section 17.54.040 Public Hearing states: "The planning and zoning commission shall hold at least one public hearing before considering any change or amendment to the provision of this title or the boundaries of the districts."

The Public Hearing was held on August 10th, 2016 meets the Public Hearing code requirement.

Section 17.06.060(B1) Notification Requirements states: "A notice shall be posted and published. The notice shall be published at least once a week for the two consecutive weeks prior to the date of the public hearing in a newspaper of general circulation. The last date of publication shall not be less than three days before the date of the public hearing."

Notification was posted on the City Hall bulletin board located at 212 Chenega Avenue on July 29th, 2016. Notification was published in the Valdez Star on August 3rd, and August 10th, 2016.

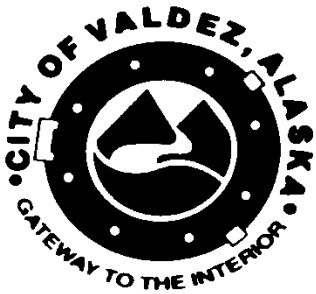
Section 17.06.060(B2) Notification Requirements states: "A notice shall be also be sent by mail at least ten days prior to the public hearing to each owner of property within a distance of three hundred feet of the exterior boundary of the lot or parcel of land described in the application for the requested action."

Notice was sent to all property owners within 300 feet of Tracts 2 & 3, Alpine Village on July 29th, 2016. As of August 8th, 2016 Staff has received two written comments from residents on the rezone and no comments from utilities or other notified agencies on the rezone. The written comments have been included in the packet for your review.

The letter from Mr. Hickel objects the rezone to light industrial based on the concern of having a cultivation facility directly adjacent to tenants with children and members of the Coast Guard. To address this concern, Mr. Dunning is proposing to rezone Lot 2 from Multi-Family Residential to Commercial Residential as a means of having a zoning district in between the existing multi-family housing and Tract 3 which he wants to rezone as Light Industrial for the purpose of developing a commercial marijuana cultivation operation. The City has not adopted in special separation requirements beyond State regulations regarding commercial marijuana operations and residential development - other than that commercial marijuana operations are prohibited in residential zoning districts

The letter from Mr. Gifford objects the rezone based on the applicant's violation of the current zoning district and over his concern of contaminants to an anadromous fish stream located on the applicant's property. The City of Valdez will continue to address the enforcement issues on Tract 2 & 3 as a separate process from the rezone. Addressing the issue of nuisance abatement and the abandonment of junk vehicles on both private and public property is a City wide issue that is currently being dealt with on a broader perspective with Community Development, the Police Department, and Public Works.

The Alaska Department of Fish and Game have management authority over anadromous streams. The Division of Habitat has the specific statutory responsibility of protecting freshwater habitat for anadromous fish and providing free passage for all fish in freshwater bodies (AS 16.05.841-871). Any activity or project that is conducted below the ordinary high water mark of an anadromous stream, or has the potential to impede fish passage, requires a Fish Habitat Permit. The Alaska Department of Environment Conservation, Division of Water establishes standards for water cleanliness and regulates discharges to waters. All property owners are responsible for following state regulations.



City of Valdez, Alaska
Planning & Zoning Commission
Rezone
Proposed Findings & Conclusions

Chapter 17.54 of the Valdez Municipal Code governs the amendments to the zoning districts. **Section 17.54.020(C) Minimum Area** states: “Except for the extension of existing district boundaries, no change in any use district classification or an official zoning map shall be considered which contains an area less than two acres, not including street or alley rights-of-way.” Tracts 2, & 3, Alpine Village, are over 2 acres; therefore, this rezone request meets the Minimum Area code requirement.

Date: August 19, 2016
File No.: REZONE #16-06
To: Planning & Zoning Commission
From: Keri Talbott, Planning Technician
REZONE: From R-C (Multi-Family Residential) to L-I (Light Industrial) & C-R Commercial Residential.

General Information

Applicant: Dwain Dunning
Property Owner: Dwain Dunning
Property Address: 4671 Richardson Highway
Legal Description: Tract 2, & 3, Alpine Village
PIDNS: 7099-002-000-0, 7099-003-000-0
Parcel Size: 2.38 acres, 3.74 acres
Zoning: From Multi-Family Residential (RC) to Light Industrial (LI) & Commercial Residential (CR)
Utility Service: CVEA Electric, CVTC or GCI Telephone, CGI Cable
Existing Land Use: Multi-Family Residential & Junk Car Storage
Access: Richardson Highway
Surrounding Land Use: North: Municipal Entitlement
South: Unclassified
East: Multi-Family Residential
West: Municipal Entitlement

Project Description and Background Summary

This zoning amendment has been requested because the current zoning does not provide for the new regulations on marijuana cultivation. The existing zoning does not provide for any

cultivation in residential areas. This can only be allowed if the zoning change is approved from multi-residential to light industrial. The proposed amendment has no impact on the goals or objectives of the Comprehensive Plan.

Findings

The Planning and Zoning Commission shall review and adopt the findings unless it finds by a preponderance of the evidence that the findings are in error. The director's findings are:

1. Is the requested permit proper according to the Rezone Uses for the zoning district?

Yes. In the Light Industrial Zoning District marijuana cultivation is an allowable use. The applicant is proposing to establish a Marijuana Cultivation business on Lot 3. Lot 2 is being proposed for a zoning change to Commercial Residential (CR) which will provide a buffer zone to the adjacent Multi-Family Residential area. However, Lot 2 is currently not being used in conformance with the existing zoning (Multi-Family), nor will the current use be in conformance with the proposed Commercial Residential zoning. The property has a multi-family dwelling on it, but it is primarily being used as a storage lot for junk vehicles.

2. Is the application complete?

Yes. The application was complete prior to the public hearing. Mr. Dunning provided all required documentation associated with the rezone for the marijuana cultivation outlined below in the Permitted accessory uses and structures.

3. Does the proposed development follow the other requirements of the City of Valdez land use code?

For Lot 3 the answer is yes. The land use code for the City of Valdez is Title 17 Zoning of the Valdez Municipal Code. Title 17 was just amended on May 18 to allow for commercial marijuana cultivation as a permitted use within the Light Industrial zoning district. For Lot 2 the answer is no. The use of the property for the storage of junk vehicles is not in conformance with the land use code.

4. Will the proposed development materially endanger the public health or safety?

With regard to Lot 3, concerns have been raised by the adjacent property owner that the proximity of a marijuana cultivation operation will not be conducive to residential dwelling unit nearby that house both children and members of the US Coast Guard. The Marijuana Control Board regulates all commercial marijuana operations. In staff's opinion, the State regulations guiding marijuana cultivation are sufficient to mitigate any conflicts. As for Lot 2, the property is primarily used to store junk vehicles. This has been the case for many years. A member of the public has expressed concern that fluids from the vehicles are potentially polluting nearby anadromous fish streams. Tests have not been taken and staff cannot confirm or deny this claim.

Given the number of vehicles, and the number of years the property has been used in this manner it is possible there is contamination at the property. Testing is necessary to confirm this.

5. Will the proposed project substantially decrease the value of or be out of harmony with property in the neighboring area?

Yes and No. The property to the south is currently zoned unclassified, but other properties adjacent are zoned multi-family residential and used for residential purposes. The intended use of marijuana cultivation should have little to no impact, however future permitted uses may. To that end staff is recommending all future use changes require the owner/applicant to go through the conditional use permit process, to include permitted uses. This same condition was assigned to the last rezone from Commercial Residential to Light Industrial to protect the other adjacent Commercial Residential zoned property. Additionally, Lot 2 is currently being used to store junk vehicles. This is obviously not a use change, but it certainly does decrease the value of neighboring property (no matter what the zoning is) and it is out of harmony with the existing area.

6. Will the proposed project be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans?

Staff finds this application to be generally in conformance with the Comprehensive Plan as reviewed below (with the exception of the junk vehicle storage currently taking place on Lot 2):

The Comprehensive Plan offers goals and objectives that provide guidance on general land use, economic development, and commercial-business land use, and industrial land use. Only those relevant to the specific zoning change are listed below.

Goal - Land Use: Provide a community land use pattern that is compatible with existing land use patterns in the community, which is physically safe, environmentally sensitive, and consistent with the provisions and requirements of the Valdez Coastal Management Program.

Objective – Provide for the adequate separation of incompatible land uses.

The immediate surrounding land to the North and South is vacant land and zoned Municipal entitlement and unclassified.

Goal - Industrial Land Use: Provide for industrial land uses so that they limit impacts on adjacent land uses and the environment, and yet have safe and convenient access to the major transportation facilities they require.

Objective - Encourage the consolidation of industrial land use activities.

Objective - Provide buffers between industrial and other land uses as a means to restrict the hazardous and/or nuisance aspects of industrial uses.

Objective - Control undesirable air and water emissions of industrial land uses.

7. Are any of the following criteria such to materially endanger the public health or safety: topography, slope and soil stability, geophysical hazards, surface and subsurface drainage and water quality?

There is potential that the junk vehicle storage is contributing to pollution in the area. Only testing of the soil and water bodies in the area will tell this for sure. This is not a new use, but continuation of an existing use in violation of both the existing and proposed zoning of Lot 2.

8. Will the proposed project require the enlargement, upgrading or extending of public utilities or service systems?

No.

Decision of the Council

The Council may, regardless of the above findings conditionally approve or deny the permit. The Councils' own independent review of information submitted at the public hearing provides the basis for the decision. The decision needs supportive findings based on factors associated with the same questions answered in the Director's Findings.

Planning and Zoning Recommendation

Approve Recommendation to City Council to Authorize the Rezone of Tract 2 & 3, Alpine Village, from Multi-Family Residential (RC) to Light Industrial (L-I) and Commercial Residential (C-R) with one Condition:

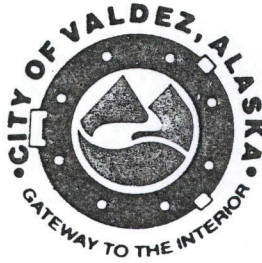
Condition 1: Any future change in the use to the property will require the property owner/applicant to go through the conditional use permit process to include permitted uses. A document requiring this will be recorded to the property.



FEE: \$50.00
SITE PLAN
WAIVED 2013 PER
RESOLUTION #12-72

CITY OF VALDEZ
APPLICATION FOR REZONE

| | | | |
|---|--|-------------|-----------|
| APPLICATION NUMBER | #16-06 | DATE | 7/18/2016 |
| NAME OF APPLICANT | Dwain Dunning | | |
| ADDRESS OF APPLICANT | PO Box 1876 | | |
| | Valdez, AK 99686 | | |
| DAYTIME PHONE | 907-831-1463 | | |
| LEGAL OWNER | Dwain or Cynthia Dunning | | |
| ADDRESS | same as above | | |
| | | | |
| PHONE NUMBER | 907-831-1463 | | |
| LOCATION OF PROPERTY AND/OR LEGAL DESCRIPTION/STREET ADDRESS | | | |
| Tract 2, Alpine Village (4271 Richardson Hwy) PIDN: 70990020000 | | | |
| Tract 3, Alpine Village (4271 Richardson Hwy) PIDN: 70990030000 | | | |
| CURRENT ZONING | RC - Multi-Family Residential | | |
| PROPOSED ZONING | Tract 2 - Commercial Residential, Tract 3 - Light Industrial | | |
| DESCRIPTION OF PROPERTY, INCLUDING SQUARE FOOTAGE OR ACREAGE. | | | |
| Lot 3 - 3.26 acres, Lot 2- in process for subdivision to increase size to 2 acres | | | |
| | | | |
| WHY IS THE PROPERTY MORE SUITED FOR THE PROPOSED ZONING DISTRICT THAN FOR THE PRESENT ZONING? | | | |
| These lots were never compliant under RC - Multi-Family Residential. Primary use to be a cultivation facility on lot 3. | | | |
| | | | |
| SIGNATURE | DATE 7/18/2016 | | |



Office of Communtiy Development
July 5, 1988

Ms. Karen Leitch
3001 Spenard Rd
Anchorage, AK 99503

RE: Karen Leitch - Rezone request from Multi-Family (RC) to Light
Industrial (LI), Tract 3, Alpine Village Subdivision, 88-2

Dear Ms. Leitch:

The Planning and Zoning Commission, at their special meeting of June 29, 1988, tabled indefinitely your rezone request from Multi-Family (RC) to Light Industrial (LI), Tract 3, Alpine Village Subdivision. It was suggested by the Commission that a more appropriate zoning would be Commercial Residential (CR).

If there are any questions or if we can be of further service, please let us know.

Sincerely,


Marshall B. Jones
City Engineer

MBJ/clis
xc Leitch and Associates Realty - Attn. James Leitch

pan 7-7-88

#80Leitch.705

AnnMarie Lain

From: whickel@gci.net
Sent: Wednesday, June 15, 2016 3:10 PM
To: AnnMarie Lain
Cc: Lisa Von Barga
Subject: Mt. View Apartments

Follow Up Flag: Follow up
Flag Status: Completed

Good afternoon AnnMarie,

Thank you for speaking with me yesterday regarding the re-zoning of Mr. Dunning's property. I understand the proposal is to re-zone from multi-family to light industrial with the intent of operating a marijuana growing facility. I have two main concerns regarding this proposal; my tenants with children and members of the Coast Guard. I have several apartments leased to Coast Guards members, and my worry is that even though this proposal is legal in the state of Alaska, it is not legal at the federal level. I have a concern that this proposal might "blacklist" my property from Coast Guard usage which makes up a significant amount of my tenants. I called the 17th District office in Juneau for guidance was told that there is no official policy about housing and growing operations today, but that an operation that close would probably make some Coast Guard members apprehensive about living in such close proximity.

If you have any questions, please let me know

Thank you,

Wally Hickel III
Vice President
Hickel Investment Company
907-343-2226
www.hickelinvestment.com

May 17, 2017

City of Valdez
Valdez Planning and Zoning Commission,
Attention Lisa Von Barga, Director CEDD

Comments regarding the Public Hearing, request from Dwain Dunning for a Rezone from (R-C) Multi-Family Residential to (L-I) Light Industrial. Parcels located at 4271 Richardson Highway, Tract 2&3 Alpine Village, USS 3323.

Dear Zoning Commission members;

I am writing to object to the request to rezone the property as noted above. The property has been operated as an apparent illegal junk yard for many years, in violation of the property current zoning, Multi-Family Residential. This illegal junk yard is a blight to our community, an apparent violation of both our Valdez Local Ordinances, State of Alaska Title 19, Chapter 27 Junk Yards, as well as Federal laws 23 U.S.C. 136 control of Junk Yards and possibly EPA Clean Water Laws.

Additionally, this property has an anadromous fish stream which flows into the Robe Lake, a fish stream supporting several natural runs of Salmon. This stream is shown on the State of Alaska Fish Resource Monitor Map. The potential for contaminates from this apparent illegal junk yard flowing into the waters of Alaska and of our community are a real concern.

For these reasons as expressed above, I object to the request to rezone. Further I ask the City of Valdez to enforce the current zoning regulations.

I have provided attachments regarding Valdez Local Ordinances, State of Alaska and Federal Laws as well as State of Alaska Fish Resource Monitor map for reference.

Thank you,

A handwritten signature in dark ink, appearing to read "Jim Gifford". The signature is fluid and cursive, with the first name "Jim" written in a larger, more prominent script than the last name "Gifford".

Jim Gifford
Resident of Valdez, Alaska
PO Box 1253
Valdez Alaska 99686



NOTE: Map depicting approximate parcel boundary only.
Use recorded plat for accurate delineation.

City of Valdez

17.04.790 Junkyard.

“Junkyard” means any lot or portion of a lot used for the storage, salvage, keeping or abandonment of junk or waste material including worn out, wrecked, scrapped, partially or fully dismantled discarded tangible materials, combination of materials, or items, such as machinery, metal, rags, rubber, paper, plastics, chemicals and building materials which cannot, without further reconditioning, be used for their original purpose. (Ord. 03-15 § 1 (part): prior code § 30-8(b) (part))

8.20.040 Junk vehicles.

A. It is unlawful for any person to place upon public property not set aside by law as a refuse disposal, or upon any private property, except licensed junk yards, any wrecked, junked or abandoned vehicle.

B. It is unlawful for any owner, lessee, agent, tenant or occupant to allow or permit to remain on any property owned or controlled by him, except licensed junk yards, any wrecked, junked or abandoned vehicle.

C. Any violation of subsection A or B of this section shall constitute a public nuisance. The costs of abatement may be charged or assessed by the city council as provided by Section 8.20.150(B) against any or all of the following:

1. The vehicle;
2. The registered owner of the vehicle;
3. Any person who has acquired the right to possession of the vehicle from or through the registered owner;
4. Any person in violation of subsection A or B of this section;
5. The owner, lessee, agent, tenant or person in control of the property where the vehicle was situated at the time of the notice to abate.

D. As used in this section:

1. The term “abandoned” includes any vehicle which, at the time of the notice of abandonment, cannot be operated as a motor vehicle in compliance with the laws of the state because of mechanical failure or condition.

2. The term “vehicle” means any motor vehicle as defined in this code and includes any body or part of any such motor vehicle.

E. A person having upon his premises an abandoned vehicle which is in need only of reasonable repairs and is without available funds to obtain the required license or to make such repairs may apply to the city manager for a permit to keep the vehicle upon the premises. (Ord. 11-02 § 1 (part); prior code § 16-4)

State of Alaska, Title 19, Chapter 27, Junk yards, Section 10 through 140

AS 19.27.010. Purpose.

For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways and other roads maintained by the state, and to preserve and enhance the scenic beauty of land bordering public highways and other roads maintained by the state, it is declared to be in the public interest to regulate and restrict junk yards in areas adjacent to the interstate, primary, and secondary systems within this state and other roads maintained by the state. The legislature finds and declares that junk yards that do not conform to the requirements of this chapter are public nuisances.

Federal, 23 USC 136, Control of Junk Yards

Title 23: Highways

PART 751—JUNKYARD CONTROL AND ACQUISITION

Contents

| | |
|---------|--|
| §751.1 | Purpose. |
| §751.3 | Applicability. |
| §751.5 | Policy. |
| §751.7 | Definitions. |
| §751.9 | Effective control. |
| §751.11 | Nonconforming junkyards. |
| §751.13 | Control measures. |
| §751.15 | Just compensation. |
| §751.17 | Federal participation. |
| §751.19 | Documentation for Federal participation. |
| §751.21 | Relocation assistance. |
| §751.23 | Concurrent junkyard control and right-of-way projects. |
| §751.25 | Programming and authorization. |

AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

[↑ Back to Top](#)

§751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

[↑ Back to Top](#)

§751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

[↑ Back to Top](#)

§751.5 Policy.

In carrying out the purposes of this part:

- (a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);
- (b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and
- (c) Nonconforming junkyards should be relocated only as a last resort.

 [Back to Top](#)

§751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Junkyard.* (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk.* Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way.* The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

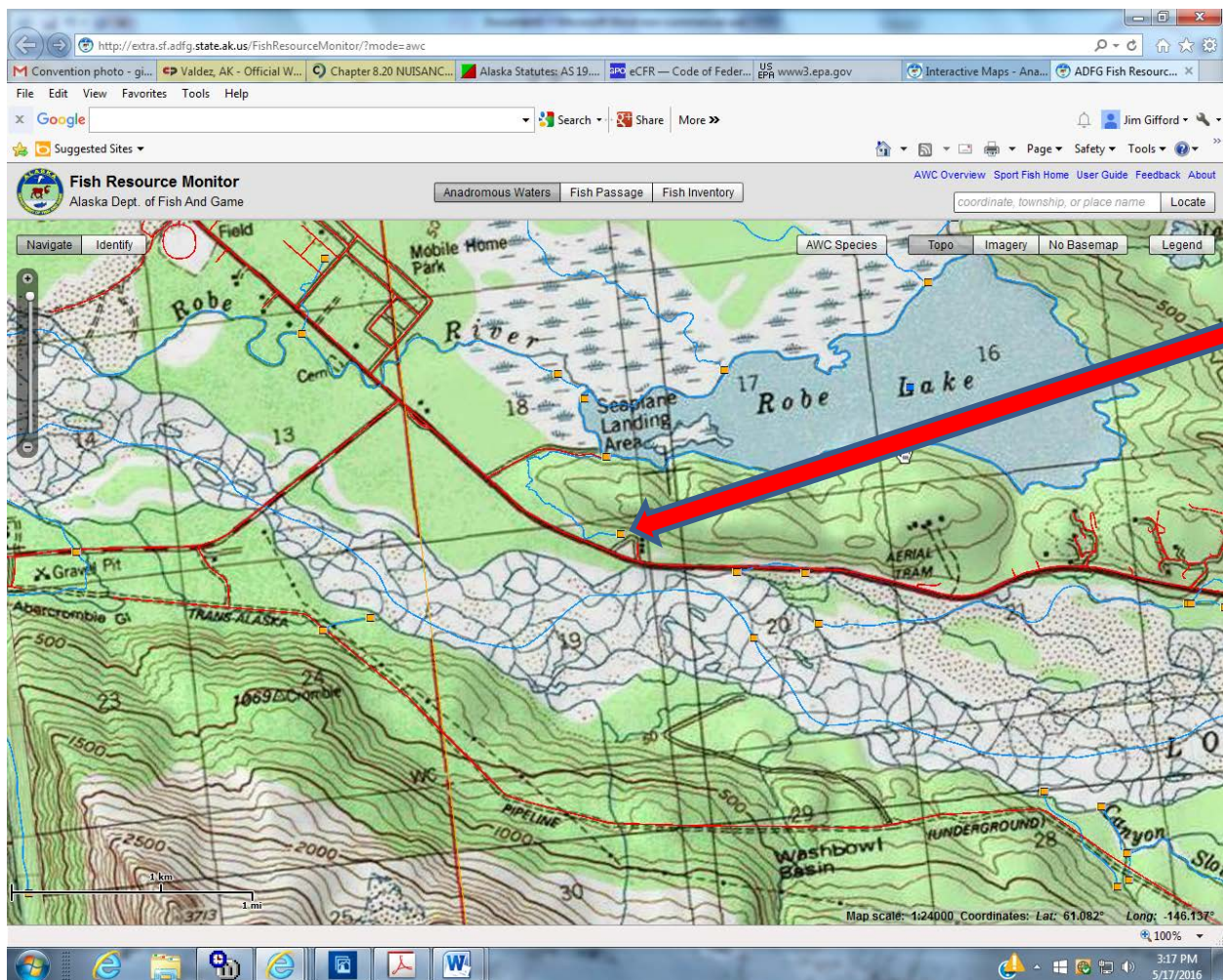
(d) *Industrial zones.* Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas.* An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot

include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

Fish Resource Monitor Map, Alaska Department of Fish & Game





Adobe Acrobat Reader DC



Version 2015.017.20050
[System requirements](#)

Your system:
Windows 7, English
[Do you have a different language or operating system?](#)

Optional offer:

- ☒ Yes, install **Google Chrome**.
 - ☐ Make Chrome my default browser
- [Learn more](#)



Terms & conditions:

By clicking the "Install now" button, you agree to the automatic installation of updates to Adobe Acrobat Reader DC, and to the [Adobe Software Licensing Agreement](#) and the [Google Chrome License](#) and the [Privacy Policy](#).

Install now





Total size: 131.8 MB



Choose your region

Copyright © 2016 Adobe Systems Incorporated. All rights reserved.
[Terms of use](#) | [Privacy](#) | [Cookies](#)

[OEM?](#)




Valdez Alaska


Valdez Municipal Code

Help

Text Size: -A +A

 SHARE

Search Code



checkboxes to select sections for saving or printing.

Clear all

+ CHARTER OF THE CITY OF VALDEZ

+ Title 1 GENERAL PROVISIONS

+ Title 2 ADMINISTRATION AND PERSONNEL

+ Title 3 REVENUE AND FINANCE

+ Title 4 DISPOSITION OF CITY-OWNED REAL PROPERTY

+ Title 5 BUSINESS LICENSES AND REGULATIONS

+ Title 6 ANIMALS

+ Title 7 ELECTIONS

+ Title 8 HEALTH AND SAFETY

+ Title 9 PUBLIC PEACE AND WELFARE

+ Title 10 VEHICLES AND TRAFFIC

+ Title 11 HARBORS AND DOCKS

+ Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

+ Title 13 PUBLIC SERVICES

+ Title 14 TIDELANDS


+ Title 15 BUILDINGS AND CONSTRUCTION

+ Title 16 SUBDIVISIONS

+ Title 17 ZONING

- CROSS-REFERENCE TABLE

- ORDINANCE LIST AND DISPOSITION TABLE



Home

<

>

VALDEZ MUNICIPAL CODE

A Codification of the General Ordinances of the City of Valdez, Alaska

CODE PUBLISHING COMPANY | Seattle, Washington

Home

<

>

The Valdez Municipal Code is current through Ordinance 16-1, passed January 19, 2016.

Disclaimer: The City Clerk's Office has the official version of the Valdez Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.valdez.ak.us/>

City Telephone: (907) 834-3408

[Code Publishing Company](#)

Mobile Version

<http://www.codepublishing.com/AK/Valdez/>[8/29/2016 2:07:21 PM]

FDsys:
GPO's Federal Digital System
About FDsys
Search Government Publications
Browse Government Publications

e-CFR Navigation Aids

- [Browse](#)
- [Simple Search](#)
- [Advanced Search](#)
 - [* Boolean](#)
 - [* Proximity](#)
- [Search History](#)
- [Search Tips](#)
- [Corrections](#)
- [Latest Updates](#)
- [User Info](#)
- [FAQs](#)
- [Agency List](#)
- [Incorporation By Reference](#)

Related Resources

The **Code of Federal Regulations (CFR) annual edition** is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office.

Download the **Code of Federal Regulations in XML**.

Parallel Table of Authorities and Rules for the Code of Federal Regulations and the United States Code
[Text](#) | [PDF](#)

Find, review, and submit comments on Federal rules that are open for comment and published in the Federal Register using [Regulations.gov](#).

Purchase individual CFR titles from the U.S. Government Online Bookstore.

Find issues of the CFR (including issues prior to 1996) at a local **Federal depository library**.

[A2]

ELECTRONIC CODE OF FEDERAL REGULATIONS

View past updates to the e-CFR.
Click here to learn more.

e-CFR data is current as of August 25, 2016

[Title 23](#) → [Chapter I](#) → [Subchapter H](#) → [Part 751](#)

[Browse Previous](#) | [Browse Next](#)

Title 23: Highways

PART 751—JUNKYARD CONTROL AND ACQUISITION

Contents

- [§751.1 Purpose.](#)
- [§751.3 Applicability.](#)
- [§751.5 Policy.](#)
- [§751.7 Definitions.](#)
- [§751.9 Effective control.](#)
- [§751.11 Nonconforming junkyards.](#)
- [§751.13 Control measures.](#)
- [§751.15 Just compensation.](#)
- [§751.17 Federal participation.](#)
- [§751.19 Documentation for Federal participation.](#)
- [§751.21 Relocation assistance.](#)
- [§751.23 Concurrent junkyard control and right-of-way projects.](#)
- [§751.25 Programming and authorization.](#)

AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

 [Back to Top](#)

§751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

 [Back to Top](#)

§751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

 [Back to Top](#)

§751.5 Policy.

In carrying out the purposes of this part:

- (a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);
- (b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and
- (c) Nonconforming junkyards should be relocated only as a last resort.

 [Back to Top](#)

§751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Junkyard*. (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk*. Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way*. The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial zones*. Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas*. An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

 [Back to Top](#)

§751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of

engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

 [Back to Top](#)

§751.11 Nonconforming junkyards.

Subject to the provisions of §751.9 of this part, the following requirements for the maintenance and continuance of a nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

 [Back to Top](#)

§751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

 [Back to Top](#)

§751.15 Just compensation.

(a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in §751.11 must pertain at the time of the taking or removal in order to establish a right to just compensation.

 [Back to Top](#)

§751.17 Federal participation.

(a) Federal funds may participate in 75 percent of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

 [Back to Top](#)

§751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

 [Back to Top](#)

§751.21 Relocation assistance.

Relocation assistance benefits pursuant to 49 CFR part 24 are available for:

(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

[40 FR 8551, Feb. 28, 1975, as amended at 50 FR 34094, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

 [Back to Top](#)

§751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

 [Back to Top](#)

§751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of part 630, subpart A of this chapter. Such projects may include one or more junkyards.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

 [Back to Top](#)

[Need assistance?](#)

FDsys:
GPO's Federal Digital System
[About FDsys](#)
[Search Government Publications](#)
[Browse Government Publications](#)

e-CFR Navigation Aids

- [Browse](#)
- [Simple Search](#)
- [Advanced Search](#)
 - [* Boolean](#)
 - [* Proximity](#)
- [Search History](#)
- [Search Tips](#)
- [Corrections](#)
- [Latest Updates](#)
- [User Info](#)
- [FAQs](#)
- [Agency List](#)
- [Incorporation By Reference](#)

Related Resources

The **Code of Federal Regulations (CFR) annual edition** is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office.

Download the **Code of Federal Regulations in XML**.

Parallel Table of Authorities and Rules for the Code of Federal Regulations and the United States Code
[Text](#) | [PDF](#)

Find, review, and submit comments on Federal rules that are open for comment and published in the Federal Register using [Regulations.gov](#).

Purchase individual CFR titles from the U.S. Government Online Bookstore.

Find issues of the CFR (including issues prior to 1996) at a local **Federal depository library**.

[A2]

ELECTRONIC CODE OF FEDERAL REGULATIONS

View past updates to the e-CFR.
[Click here to learn more.](#)

e-CFR data is current as of August 25, 2016

[Title 23](#) → [Chapter I](#) → [Subchapter H](#) → [Part 751](#)

[Browse Previous](#) | [Browse Next](#)

Title 23: Highways

PART 751—JUNKYARD CONTROL AND ACQUISITION

Contents

- [§751.1 Purpose.](#)
- [§751.3 Applicability.](#)
- [§751.5 Policy.](#)
- [§751.7 Definitions.](#)
- [§751.9 Effective control.](#)
- [§751.11 Nonconforming junkyards.](#)
- [§751.13 Control measures.](#)
- [§751.15 Just compensation.](#)
- [§751.17 Federal participation.](#)
- [§751.19 Documentation for Federal participation.](#)
- [§751.21 Relocation assistance.](#)
- [§751.23 Concurrent junkyard control and right-of-way projects.](#)
- [§751.25 Programming and authorization.](#)

AUTHORITY: 23 U.S.C. 136 and 315, 42 U.S.C. 4321-4347 and 4601-4655, 23 CFR 1.32, 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 8551, Feb. 28, 1975, unless otherwise noted.

 [Back to Top](#)

§751.1 Purpose.

Pursuant to 23 U.S.C. 136, this part prescribes Federal Highway Administration [FHWA] policies and procedures relating to the exercise of effective control by the States of junkyards in areas adjacent to the Interstate and Federal-aid primary systems. Nothing in this part shall be construed to prevent a State from establishing more stringent junkyard control requirements than provided herein.

[40 FR 12260, Mar. 18, 1975]

 [Back to Top](#)

§751.3 Applicability.

The provisions of this part are applicable to all areas within 1,000 feet of the nearest edge of the right-of-way and visible from the main traveled way of all Federal-aid Primary and Interstate Systems regardless of whether Federal funds participated in the construction thereof, including toll sections of such highways. This part does not apply to the Urban System.

 [Back to Top](#)

§751.5 Policy.

In carrying out the purposes of this part:

- (a) Emphasis should be placed on encouraging recycling of scrap and junk where practicable, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*);
- (b) Every effort should be made to screen nonconforming junkyards which are to continue as ongoing businesses; and
- (c) Nonconforming junkyards should be relocated only as a last resort.

 [Back to Top](#)

§751.7 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Junkyard*. (1) A Junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, autorecycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(2) An Automobile Graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.

(3) An Illegal Junkyard is one which was established or is maintained in violation of State law.

(4) A Nonconforming Junkyard is one which was lawfully established, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State regulations due to changed conditions. Illegally established junkyards are not nonconforming junkyards.

(b) *Junk*. Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.

(c) *Main traveled way*. The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

(d) *Industrial zones*. Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of part 750, subpart G of this chapter relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

(e) *Unzoned industrial areas*. An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the FHWA. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

 [Back to Top](#)

§751.9 Effective control.

(a) In order to provide effective control of junkyards located within 1,000 feet of Interstate and Federal-aid primary highways, the State must:

(1) Require such junkyards located outside of zoned and unzoned industrial areas to be screened or located so as not to be visible from the main traveled way, or be removed from sight.

(2) Require the screening or removal of nonconforming junkyards within a reasonable time, but no later than 5 years after the date the junkyard becomes nonconforming unless Federal funds are not available in adequate amounts to participate in the cost of such screening or removal as provided in 23 U.S.C. 136(j).

(3) Prohibit the establishment of new junkyards unless they comply with the requirements of paragraph (a)(1) of this section.

(4) Expeditiously require junkyards which are illegally established or maintained to conform to the requirements of paragraph (a)(1) of this section.

(b) Sanitary landfills as described herein need not be screened to satisfy requirements of Title 23, U.S.C., but landscaping should be required when the fill has been completed and operations have ceased, unless the landfill area is to be used for immediate development purposes. A sanitary landfill, for the purposes of this part, is a method of disposing of refuse on land without creating a nuisance or hazards to public health or safety by utilizing the principles of

engineering to confine the refuse to the smallest practical area, to reduce it to the smallest practical volume, and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

(c) The State shall have laws, rules, and procedures sufficient to provide effective control, to discover illegally established or maintained junkyards shortly after such occurrence, and to cause the compliance or removal of same promptly in accordance with State legal procedures.

 [Back to Top](#)

§751.11 Nonconforming junkyards.

Subject to the provisions of §751.9 of this part, the following requirements for the maintenance and continuance of a nonconforming junkyard apply:

(a) The junkyard must have been actually in existence at the time the State law or regulations became effective as distinguished from a contemplated use, except where a permit or similar specific State governmental action was granted for the establishment of a junkyard prior to the effective date of the State law or regulations, and the junkyard owner acted in good faith and expended sums in reliance thereon.

(b) There must be existing property rights in the junkyard or junk affected by the State law or regulation. Abandoned junk and junkyards, worthless junk, and the like are not similarly protected.

(c) If the location of a nonconforming junkyard is changed as a result of a right-of-way taking or for any other reason, it ceases to be a nonconforming junkyard, and shall be treated as a new junkyard at a new location.

(d) The nonconforming junkyard must have been lawful on the effective date of the State law or regulations and must continue to be lawfully maintained.

(e) The nonconforming junkyard may continue as long as it is not extended, enlarged, or changed in use. Once a junkyard has been made conforming, the placement of junk so that it may be seen above or beyond a screen, or otherwise becomes visible, shall be treated the same as the establishment of a new junkyard.

(f) The nonconforming junkyard may continue as long as it is not abandoned, destroyed, or voluntarily discontinued. Each State should develop criteria to define these terms.

 [Back to Top](#)

§751.13 Control measures.

(a) Consistent with the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), recycling of junk and scrap is to be encouraged to the greatest extent practicable in the implementation of the junkyard control program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose.

(b) Every effort shall be made to screen where the junkyard is to continue as an ongoing business. Screening may be accomplished by use of natural objects, landscaping plantings, fences, and other appropriate means, including relocating inventory on site to utilize an existing natural screen or a screenable portion of the site.

(c) Where screening is used, it must, upon completion of the screening project, effectively screen the junkyard from the main traveled way of the highway on a year-round basis, and be compatible with the surroundings. Each State shall establish criteria governing the location, design, construction, maintenance, and materials used in fencing or screening.

(d) A junkyard should be relocated only when other control measures are not feasible. Junkyards should be relocated to a site not visible from the highway or to an industrial area, and should not be relocated to residential, commercial, or other areas where foreseeable environmental problems may develop.

(e) The State may develop and use other methods of operation to carry out the purposes of this directive, subject to prior FHWA approval.

 [Back to Top](#)

§751.15 Just compensation.

(a) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law, which are required to be removed, relocated, or disposed of pursuant to 23 U.S.C. 136.

(b) No rights to compensation accrue until a taking or removal has occurred. The conditions which establish a right to maintain and continue a nonconforming junkyard as provided in §751.11 must pertain at the time of the taking or removal in order to establish a right to just compensation.

 [Back to Top](#)

§751.17 Federal participation.

(a) Federal funds may participate in 75 percent of the costs of control measures incurred in carrying out the provisions of this part including necessary studies for particular projects, and the employment of fee landscape architects and other qualified consultants.

(b) Where State control standards are more stringent than Federal control requirements along Interstate and primary highways, the FHWA may approve Federal participation in the costs of applying the State standards on a statewide basis. Where State standards require control of junkyards in zoned or unzoned industrial areas, Federal funds may participate only if such action will make an effective contribution to the character of the area as a whole and the cost is reasonable, but such projects should be deferred until the work in the areas where control is required has progressed well toward completion.

(c) Generally, only costs associated with the acquisition of minimal real property interests, such as easements or temporary rights of entry, necessary to accomplish the purposes of this part are eligible for Federal participation. The State may request, on a case-by-case basis, participation in costs of other interests beyond the minimum necessary, including fee title.

(d) Federal funds may participate in costs to correct the inadequacies of screening in prior control projects where the inadequacy is due to higher screening standards established in this part or due to changed conditions.

(e) Federal funds may participate in the costs of moving junk or scrap to a recycling place of business, or in the case of junk with little or no recycling potential, to a site for permanent disposal. In the latter case, reasonable land rehabilitation costs or fees connected with the use of such a disposal site are also eligible. In a case where the acquisition of a permanent disposal site by the State would be the most economical method of disposal, Federal funds may participate in the net cost (cost of acquisition less a credit after disposal) of a site obtained for this purpose.

(f) Federal funds may participate in control measure costs involved in any junkyard lawfully established or maintained under State law which is reclassified from conforming to nonconforming under revised State regulations and policy pursuant to this part.

(g) Federal funds may participate in the costs of acquisition of a dwelling in exceptional cases where such acquisition is found necessary and in the public interest, and where acquisition of the dwelling can be accomplished without resort to eminent domain.

(h) Federal funds shall not participate in:

(1) Costs associated with the control of illegal junkyards except for removal by State personnel on a force account basis or by contract, or in costs of controlling junkyards established after the effective date of the State's compliance law except where a conforming junkyard later becomes nonconforming due to changed conditions;

(2) Any costs associated with the acquisition of any dwelling or its related buildings if acquired through eminent domain in connection with the junkyard control program;

(3) Costs of acquisition of interests or rights as a measure for prohibition or control of the establishment of future junkyards;

(4) Costs of maintaining screening devices after they have been erected; or

(5) Costs of screening junk which has been or will be removed as a part of a junkyard control project.

 [Back to Top](#)

§751.19 Documentation for Federal participation.

The following information concerning each eligible junkyard must be available in the States' files to be eligible for Federal participation in the costs thereof:

(a) Satisfactory evidence of ownership of the junk or junkyard or both.

(b) Value or cost documentation (including separate interests if applicable) including proof of obligation or payment of funds.

(c) Evidence that the necessary property interests have passed to the State and that the junk has been screened, relocated, removed or disposed of in accordance with the provisions of this part.

(d) If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

[40 FR 8551, Feb. 28, 1975; 40 FR 12260, Mar. 18, 1975]

 [Back to Top](#)

§751.21 Relocation assistance.

Relocation assistance benefits pursuant to 49 CFR part 24 are available for:

(a) The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property and actual reasonable expenses in searching for a replacement business or, if the eligibility requirements are met, a payment in lieu of such expenses.

(b) Relocation assistance in locating a replacement business.

(c) Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.

(d) Replacement housing payments if the acquisition of the dwelling is found by FHWA to be necessary for the federally assisted junkyard control project.

[40 FR 8551, Feb. 28, 1975, as amended at 50 FR 34094, Aug. 23, 1985; 54 FR 47076, Nov. 9, 1989]

 [Back to Top](#)

§751.23 Concurrent junkyard control and right-of-way projects.

The State is encouraged to coordinate junkyard control and highway right-of-way projects. Expenses incurred in furtherance of concurrent projects shall be prorated between projects.

 [Back to Top](#)

§751.25 Programming and authorization.

(a) Junkyard control projects shall be programmed in accordance with the provisions of part 630, subpart A of this chapter. Such projects may include one or more junkyards.

(b) Authorization to proceed with a junkyard control project may be given when the State submits a written request to FHWA which includes the following:

(1) The zoning and validation of the legal status of each junkyard on the project;

(2) The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State;

(3) The real property interest to be acquired in order to implement the control measures;

(4) Plans or graphic displays indicating the location of the junkyard relative to the highway, the 1,000 foot control lines, property ownership boundaries, the general location of the junk or scrap material, and any buildings, structures, or improvement involved; and

(5) Where screening is to be utilized, the type of screening, and adequately detailed plans and cross sections, or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

[40 FR 8551, Feb. 28, 1975, as amended at 41 FR 9321, Mar. 4, 1976]

 [Back to Top](#)

[Need assistance?](#)