



Legislation Text

File #: RES 22-0034, **Version:** 1

ITEM TITLE:

#22-34 - Authorizing a Lease with Harris Sand & Gravel for 4380 McKinley Street, Parcel B, ATS 10

SUBMITTED BY: Nicole LeRoy, Planner

FISCAL NOTES:

Expenditure Required: N/A

Unencumbered Balance: N/A

Funding Source: N/A

RECOMMENDATION:

Approve Resolution #22-34 authorizing a lease with Harris Sand & Gravel for 4380 McKinley Street, Parcel B, ATS 10 owned by the City of Valdez with conditions.

SUMMARY STATEMENT:

Planning Department staff received a lease application from Bill Harris of Harris Sand & Gravel for use of 4380 McKinley Street, Parcel B ATS 10 (plat 98-35) for a barge loading and unloading facility. Harris Sand & Gravel has installed a dock, and stores a barge at this location.

Harris Sand & Gravel has leased this property for over twenty years. The first agreement spanned from June 1, 1998-May 31, 2003 with two five-year options to renew. The agreement was in holdover subject to month to month tenancy for several years until 2016 when Harris Sand & Gravel received approval from City Council for an additional four-year lease at this location. This lease was never executed, and was approved on the condition that any material moved through the location should be in association with construction of the new harbor only. Staff at the time had significant reservations about the safety of the long-term use of the location, and emphasized the temporary nature of the new harbor construction as justification of their recommendation of approval for the lease at the time. Since the 2016 lease agreement was never executed, Harris Sand & Gravel has continued to use the site under the 1998 lease on a month to month tenancy.

Harris Sand & Gravel is now pursuing a new lease agreement for a barge loading and unloading facility (see attached lease application narrative.) The approval of this lease would allow Harris Sand & Gravel to use the site as a barge loading and unloading facility, and allow them to move commercial freight through the location. Per VMC 14.04.060, tideland leases may be approved for a

maximum initial period of twenty-one years. Mr. Harris has requested the maximum term.

Development Costs and Requirements

VMC 4.08.100 states, “where the application is granted and the applicant becomes a lessee, the applicant shall be required to pay for any and all survey, appraisal or other costs incurred in connection with the application and lease process.”

A phase I environmental assessment is required prior to the leasing or sale of all industrial lands per the 2005 Land Management Policies and Procedures. If this lease request is approved, staff will order a phase I environmental assessment at the cost of lessee.

Mr. Harris’s lease is subject to appraisal for the purposes of adjusting fair rental value every five years. Harris Sand & Gravel pays fair market value for the location, defined in Valdez Municipal Code as 10% of appraised value annually. The property is also subject to possessory interest taxation which Harris Sand & Gravel pays. If this new lease is granted, staff will order an appraisal at the cost of lessee to determine fair rental value for the location.

Mr. Harris now holds the required US Army Corps of Engineers (USACE) permit for the development and will be required to maintain any additional permitting throughout the duration of the use as deemed necessary by the USACE. Additionally, Mr. Harris was required to apply for a retroactive City of Valdez floodplain development permit for the improvements made, which he has submitted.

Staff Comment

Public Works Director Rob Comstock, Ports and Harbors Director Jeremy Talbott, and Capital Facilities Director Nate Duval were solicited for comments on the lease application. Mr. Comstock and Mr. Duval had no objections to the proposed lease. Mr. Talbot recommends Harris Sand & Gravel be required to pay port tariffs on freight moved through the location, as well as that the lease include provision that in the event of an emergency, the city can utilize the location and its improvements for public use. Port tariffs have not been a condition of previous approvals for this location, which have stipulated that no commercial freight should be moved through the property. Staff has proposed port tariffs as a compromise to allow for the site to be used for commercial freight, while reducing competition with the Port of Valdez.

Proposed condition #2 references required port tariffs, and proposed condition #3 references the inclusion of an emergency provision in the lease.

Zoning

Per VMC 4.08.060 Zoning. “No application for lease shall be considered unless the land desired to be leased is zoned to permit the use to which the applicant intends to put the land.”

It appears prior staff had been under the impression the area was zoned light industrial, which allows for all permitted uses in the waterfront industrial district including barge freight terminals, and ports

and harbor facilities. However, the proposed lease area is zoned public lands which does not allow for barge freight terminals. The approval of this lease would be on the condition the property is appropriately rezoned to light industrial to accommodate the requested use.

Alignment of Proposed Use with the 2021 Adopted Comprehensive Plan

The future land use maps in Plan Valdez designate this area as working waterfront place type, a place type that allows for commercial and industrial waterfront-based uses such as barge loading and unloading as Mr. Harris has proposed.

The proposed lease location is also within an “area of significant environmental constraint”, as designated by the development suitability map for Plan Valdez (p. 10) Areas with this designation have been assessed by the comprehensive plan process to be subject to increased risks of geophysical hazards including flooding and liquefaction. As a tideland property, this location is subject to tsunami inundation risk. The technical memorandum assessment in Plan Valdez regarding soil stability states, “potentially liquefiable soils have been identified throughout Valdez and are especially prevalent in the vicinity of Old Town Valdez. During the 1964 earthquake, wide-scale liquefaction and lateral spreading occurred in the old townsite, and modern investigations such that the risk is still present (PND 2019.) (p. 60 Plan Valdez.)

Additionally, DOWL Engineers 1983 “Old Town Hazard Assessment” designates this property as seismically-induced hazard “Zone A.” This assessment concluded, “the geology of Port Valdez, the subsurface soil conditions in and about the Old Valdez townsite, and the potential for strong earthquake shaking in the area significantly influence the stability of the old townsite.” Zone A is, “an area very highly susceptible to seismically induced ground failure” and the report concludes “no structures or utilities should be constructed in Zone A. Temporary marine loading facilities and storage areas might be allowed, if the risks to life and property can be justified on an individual project needs basis” (p. 16 Old Town Hazard Assessment.)

Staff recommends Council carefully consider risks to life safety when recommending approval of this use, in light of the physical characteristics of the location. Staff proposes Harris Sand & Gravel staff and contractors should only be on the site during active construction and site reclamation of the facility, during active docking of vessels, and loading and unloading of trucks and vessels. Staff also proposes Harris Sand and Gravel be required to wear appropriate floatation personal protective equipment at all times while in the lease area, and sign a written acknowledgment of the hazard area. These conditions were proposed by staff during the 2016 lease approval as well, in an attempt to mitigate some of the inherent safety risks associated with this location.

The Ports and Harbors Commission voted to approve a recommendation to approve this lease on April 18, 2022. Staff had originally included the proposed condition that Harris Sand & Gravel staff and contractors be required to wear appropriate floatation PPE at all times while in the lease area. The Ports and Harbors Commission felt this was an unnecessary condition, and staff agreed, and removed it from the recommendation for the Planning and Zoning Commission.

The Planning and Zoning Commission voted to approve a recommendation to approve this lease on April 27, 2022 with recommended staff conditions.

In conclusion, staff recommends City Council approve a lease with Harris Sand and Gravel with the

following conditions:

1. Harris Sand & Gravel is required to obtain all state, local, and federal permits necessary, and the conditions of such approvals must be complied with throughout the duration of the use.
2. Harris Sand & Gravel is required to pay port tariffs for freight moved through the lease location.
3. The lease agreement shall contain language allowing the City to be able to use the facility in the event of an emergency
4. This lease approval is contingent upon the rezone of the property from public lands to light industrial.
5. Harris Sand & Gravel staff and contractors should only be on the site during active construction and site reclamation of the facility, during active docking of vessels, and loading and unloading of trucks and vessels.
7. Harris Sand & Gravel is required to sign a written acknowledgement of the hazard area.
8. A phase I environmental site assessment is required to be completed prior to the execution of the lease agreement per the 2005 Property Management Policies and Procedures.

Pending Council approval, staff will bring forward an application to rezone the property from public lands to light industrial. The phase I environmental assessment will need to be completed prior to the lease being executed as well. Assuming the rezone is approved, staff will work with the City Attorney and Mr. Harris to execute a lease agreement. The City Council may request any conditions or amendments to staff's proposed conditions.