


MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: July 30, 2009

TO: Board of Adjustment

FROM: Eric Feldt, Planner 
Community Development Department

FILE NO.: VAR2009-00024

PROPOSAL: A Variance request to renovate half of Douglas Boat Harbor within the 330-foot Habitat Setback of an eagle's nest located on Mayflower Island.

GENERAL INFORMATION

Applicant: Gary Gillette, CBJ Docks & Harbors Department

Property Owner: City & Borough of Juneau

Property Address: 120 Savikko Rd

Legal Description: ATS 14 FR

Parcel Code Number: 2-D04-0-T32-005-0

Site Size: Approx. 10 acres

Zoning: Waterfront Industrial

Utilities: CBJ Water & Sewer

Access: Savikko Road

Existing Land Use: Douglas Boat Harbor

Surrounding Land Use: North - (Waterfront Commercial) Mayflower Island
South - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena
East - Gastineau Channel
West - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena



ATTACHMENTS

Attachment	A	Project Letter
Attachment	B	Vicinity Map
Attachment	C	Site Design
Attachment	D	Notice of Decision of VAR2007-00012

PROJECT DESCRIPTION

The City & Borough of Juneau (CBJ) Docks & Harbors Department is planning the renovation of Douglas Boat Harbor within 330 feet of an Eagle’s nest that is located on Mayflower Island (Attachment C). According to CBJ § 49.70.310 (a)(2), development is prohibited within 330 feet of an Eagle’s nest on public land, therefore a variance to allow such development must be granted by the CBJ Board of Adjustment in order for the project to continue.

A variance to the 330-foot development setback was previously approved but the variance expired because the project was delayed due to the discovery of trace amounts of mercury in the harbor which has prolonged the renovation that was earlier permitted on May 8th, 2007. Details of this finding are stated in the project letter (Attachment A). At that time, a similar variance request was filed and approved under variance permit number VAR2007-00012 (Attachment D), to allow construction within the habitat setback of the eagle’s nest. Therefore, construction was permitted within the setback of the eagle’s nest, but the recent discovery of mercury postponed commencement of construction beyond the deadline to file for a permit extension.

BACKGROUND

As stated earlier, a variance permit was granted on May 8, 2007 permitting the construction of the Douglas Boat Harbor renovation to occur within the 330-foot Habitat Setback of an Eagle’s nest located on Mayflower Island (Attachment D). However, with the recent discovery of mercury in the harbor, CBJ Docks & Harbors has neither filed for a building permit to initiate construction within the established deadline of the variance permit, nor met the deadline for extending the permit. Therefore, a new variance application is required.

ANALYSIS

Attachment ‘C’ depicts existing and proposed moorage features of the Douglas Boat Harbor. The eagle’s nest, shown in attachment ‘B’, is perched on a tree upon Mayflower Island and has existed in that location for many years and is frequently used. This nest is not hidden from the view of the public, and is within audible distance to boat traffic within the harbor and the Gastineau Channel. Further, there is a driveway connecting the harbor to the US Department of Interior, Bureau of Mine, office building located on the island. Therefore, the eagle’s nest has been used despite constant

human activity and is anticipated to be used in future years.

Renovation of the harbor will exude increased levels of noise in the area, especially during the installation of the pylons. Unlike traditional pile drivers that use repetitive impact force to drive a pylon, a vibratory pile driver will be used that combines horizontal-vertical vibration methods to drive the pylon and a suppressor mechanism that will minimize noise levels during operation. This driver will also help control the driving force onto its target. To better understand the mechanics of this driver, feel free to search <http://www.iceuse.com/howworks.htm> "International Construction Equipment" titled "How a vibratory pile drive/ extractor works. If harden earthen material is found, however, an impact hammer may be used more often.

Regardless of the type of pile driver used, noise levels in the harbor will be increased. To minimize undesired levels of noise, the following code shall be adhered:

CBJ § 42.20.095(b) Construction of buildings and projects. It is unlawful to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or similar heavy construction equipment, before 7:00 a.m. or after 10:00 p.m., Monday through Friday, or before 9:00 a.m. or after 10:00 p.m., Saturday and Sunday, unless a permit shall first be obtained from the City and Borough building official. Such permit shall be issued by the building official only upon a determination that such operation during hours not otherwise permitted under this section is necessary and will not result in unreasonable disturbance to surrounding residents

Since these limitations of hours of operation are already codified, staff recommends these construction hours be listed as an advisory condition of approval.

The US Fish & Wildlife Service (USF&WS) reviewed the project in terms of disturbances to eagles and eaglets using the nest and advises that construction shall not occur between the hours of 7pm - 7am. This will respect the eaglet/ parent feeding times during the early morning and late evening hours of the day. Staff recommends these hours of non-operation be a condition of approval. Also, the USF&WS recommends pile driving shall not take place prior to August 31, which marks the ending of the eaglet incubation period. Due to the fewer hours of sunlight and changing of the weather, waiting to install pylons until September may be unreasonable. Instead, staff recommends the use of a qualified spotter to ensure disturbance to the eagles/ eaglets is minimized for at least the first week of pile driving.

The Alaska Department of Fish and Game (ADF&G) also commented on this project and recommends a prohibition of 'in-water' construction from March 15 through June 15 to minimize adverse effects to the out-migratory salmon and herring spawning period within the Gastineau Channel. This condition shall be recommended.

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

1. ***That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

If the recommended methods and times of construction as stated earlier are adopted, the encroachment of 250' into the 330' habitat setback shall not discourage the continued use of the eagle's nest. There are also property owners and existing buildings upon Mayflower Island, located much closer to the eagle's nest than the Harbor floats that haven't disturbed the eagles.

Therefore this criterion is met.

2. ***That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

With the recommended conditions, the eagles will still be able to successfully utilize the nest.

Therefore this criterion is met.

3. ***That the authorization of the variance will not injure nearby property.***

The construction within the 330' habitat setback does not negatively affect any nearby properties.

Therefore this criterion is met.

4. ***That the variance does not authorize uses not allowed in the district involved.***

The continuation and renovation of the floats and shorelines within the Douglas Harbor is allowed within the Waterfront Industrial District as listed in Section 10.510 under CBJ§ 49.25.300 *Table of Permissible Uses* with a building permit.

Therefore this criterion is met.

5. *That compliance with the existing standards would:*

(A) *Unreasonably prevent the owner from using the property for a permissible principal use;*

Strict adherence to the 330' development restriction would prevent a significant portion of the Harbor renovation to occur, which is a permissible use as stated above. With the recommended conditions, the renovation will not harm the eagles.

Therefore this sub-criterion is met.

(B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*

The renovation of Douglas Harbor will expand the size of the floats, but not increase the number of the floats nor be any closer to the eagle's nest. The design of renovated floats, fingers, and pylons will be consistent to those already existing upon the northern floats. Therefore, the development restriction unreasonably prevents the owner from renovating the portion of the Harbor. And with the recommended conditions, the renovation will not harm the eagles.

Therefore this sub-criterion is met.

(C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;*

The site does not contain any unique physical features that would render compliance with the standards unreasonably expensive.

Therefore this sub-criterion is not met.

(D) *Because of preexisting nonconforming conditions on the subject parcel the grant of the variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.*

Not Applicable. No non-conformities exist at the construction site.

Since sub-criterion A & B are met, this criterion is met.

6. *That a grant of the variance would result in more benefits than detriments to the neighborhood.*

The renovation of the three floats and fingers, southern headwalk, pylons, gangway, and shoreline preservation are needed not only to accommodate larger moorings, but also to ensure public safety due to the aging of the original floats. With the recommended conditions, the use of the eagle's nest will not be seriously impacted.

Therefore this sub-criterion is met.

JUNEAU COASTAL MANAGEMENT PROGRAM

Juneau Coastal Management Program (JCMP), Section 11. Habitat B. Findings (5) and (8) identify bald eagles as an important species. JCMP Section 11. Habitat C. Administrative Policies (4) states that it is the policy to protect areas surrounding identified eagle nests from conflicting land uses. This policy has been implemented in the Land Use Code under CBJ § 49.70.310 (2), which prohibits development within 330 feet of an eagle nest on public land.

The USFW&S has recommended conditions that will minimize impacts to the eagle's nest. With the overall recommended conditions, construction will not negatively affect the eagles nest.

Therefore, the development can proceed as proposed and the goals of the Juneau Coastal Management Plan will be met.

FINDINGS

1. *Is the application for the requested variance complete?*

Yes. We find the application contains the information necessary to conduct full review of the proposed renovation. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.20

2. *Will the proposed development comply with the Juneau Coastal Management Program?*

Yes. With the recommended conditions, the proposal will fully comply with the JCMP. Based upon the conditions of the USFWS, such a development will not negatively affect the eagles, and therefore meets the intent of CBJ §49.70.310 (2).

3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?*

Yes. Based on the analysis above, staff finds that the Variance meets the criteria of CBJ §49.20.250, *Grounds for Variances*.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR2009-00024. The Variance permit would allow for the renovation of Douglas Harbor to occur with the following conditions:

1. Construction shall not occur from the hours of 7pm through 7am.
2. Noise levels shall not exceed 65 decibels at the property line during the day or 55 decibels at night.
3. In-water construction shall be prohibited from March 15 through June 15.
4. The use of a qualified spotter to ensure disturbance to the eagles/ eaglets is minimized for at least the first week of pile driving shall be required.

Advisory Condition

1. Hours of operation shall comply with CBJ § 42.20.095(b) *Construction of buildings and projects*.

DEVELOPMENT PERMIT APPLICATION

(APPLICANT - PLEASE FILL IN THE PROJECT/APPLICANT INFORMATION)

Project Number PS07-71	CITY and BOROUGH of JUNEAU	Date Received: 7-16-09
Project Name (City Staff to assign name) Douglas Harbor Renovation		

PROJECT / APPLICANT INFORMATION	Project Description Renovation of Douglas Boat Harbor Variance extension		
	PROPERTY LOCATION		
	Street Address 120 Savikko Rd	City/Zip Douglas 99824	
	Subdivision (if known)	Survey (if known) ATS 14 FR	Block / Tract (if known) Lot (if known)
	Assessor's Parcel Number (if known) 2-Do4-0-T32-005-0		
	LANDOWNER/LESSEE		
	Property Owner's Name City & Borough of Juneau	Contact Person Gary Gullette	Work Phone No. 586-0398
	Mailing Address 155 S. Seward St. Juneau 99801	Home Phone No.	FAX No.
	LANDOWNER/LESSEE CONSENT (Required for Planning permits not needed on Building/Engineer permits)		INITIAL ALL THAT MAY APPLY
	I am (we are) the owner(s) or Lessee of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application. X [Signature] for John Stone 16 July 09 Landowner/Lessee Signature Date X _____ Date Landowner/Lessee Signature Date NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property and may do so during the weekend before the scheduled public hearing date.		APPLICATION TYPE ALLOWABLE USE CONDITIONAL USE VARIANCE DESIGN REVIEW SUBDIVISION OTHER:
APPLICANT (If same as OWNER, write "SAME" and sign and date at X below)			
Applicant's Name Docks & Harbors Dept	Contact Person Gary Gullette	Work Phone No. 586-0398	
Mailing Address 155 S. Seward St Juneau AK 99801	Home Phone No.	FAX No.	
X [Signature] Applicant's Signature		X 16 July 09 Date of Application	

(OFFICE USE ONLY BELOW THIS LINE)

STAFF APPROVALS	C K	PERMIT TYPE	NOISE	DATE RECEIVED	APPLICATION NO.	C K	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.
		ALLOWABLE USE APPROVAL					WATER PERMIT		
		CONDITIONAL USE APPROVAL					SEWER PERMIT		
		VARIANCE			7-16-09 VAR09-024		GRADING PERMIT		
		DESIGN REVIEW APPROVAL	MINOR MAJOR				DRIVEWAY PERMIT		
		SUBDIVISION	MINOR MAJOR PUD				RIGHT-OF-WAY PERMIT		
		STREET VACATION					PUB. FAC. TRANSMISS. & EXCAV. PERMIT		
		SIGN APPROVAL	LOCATED IN HISTORIC DISTRICT? <input type="checkbox"/> YES <input type="checkbox"/> NO				OTHER - (Describe)		
		BUILDING PERMIT					Permit Intake Initials Uppen ESF		
		Zone	Total Lot Area	Required Setbacks Front _____ Back _____ Side _____ Other _____					
COMMENTS:									

[I:\FORMS\CDD\FORMS\PERMFORM.XLS REV. 2/19/09]

NOTE: DEVELOPMENT PERMIT APPLICATION FORM MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

VARIANCE APPLICATION

(APPLICANT PLEASE FILL IN SHADED AREAS AS A MINIMUM)

Project Number PE07-71	Project Name Douglas Harbor Renovation	Case Number VAR09-24	Hearing Date	Date Received 7-16-09
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VARIANCE TYPE: Setback Height Bulk Other (Describe) **Eagle Tree**

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

Extend VAR 2007 - 00012

PREVIOUS VARIANCE APPLICATIONS:

Yes No

Date of Filing: _____

Variance from which standards: Setback Height Bulk Other (Describe) _____

Was variance granted? Yes No

EXISTING USE OF LAND OR BUILDING(S):

PROPOSED USE OF LAND OR BUILDING(S):

UTILITIES AVAILABLE WATER: Public On Site SEWER: Public On Site

PROPOSED SETBACKS (If variance changes setbacks):

Front _____ ft. Rear _____ ft. Side _____ ft. Other _____ ft.

UNIQUE CHARACTERISTICS OF LAND OR BUILDING (Difference from other properties in the area):

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

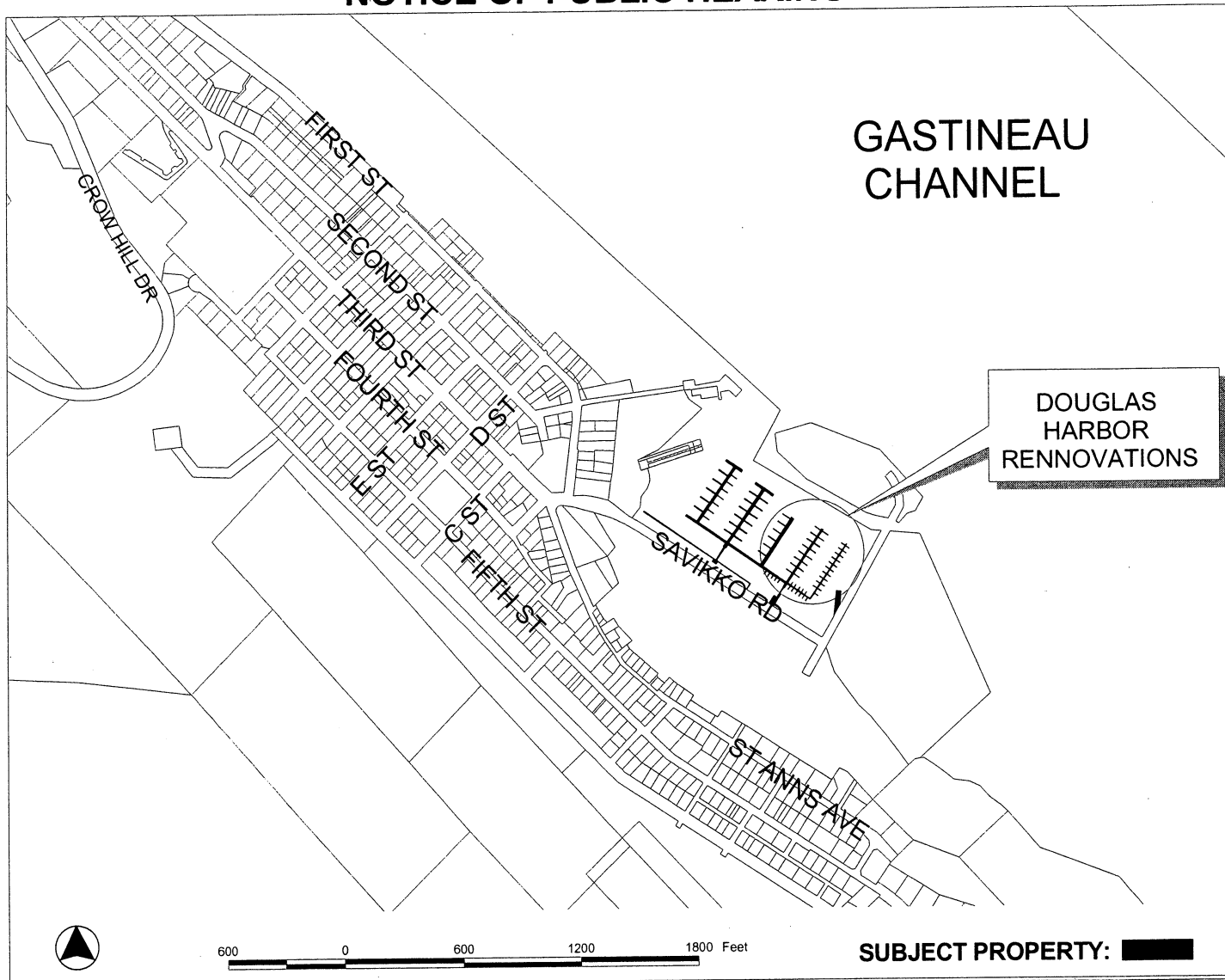
REVIEW APPROVALS

	INITIALS	DATE
Buildings	_____	_____
Engineering	_____	_____
Planning	_____	_____

VARIANCE FEES

	LESS	MINOR FEE	RECEIVED	DATE
Application Fees	\$ 200 -	transfer	_____	7-16-09
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ _____	_____	_____	_____

NOTICE OF PUBLIC HEARING



PROPOSAL: A Variance request to reconstruct Douglas Boat Harbor within the Habitat Setback of an eagle's nest.

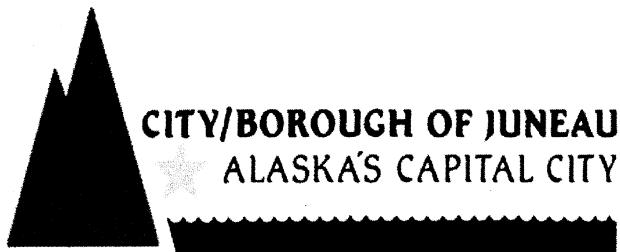
FILE NO:	VAR2009-00024	APPLICANT:	CITY & BOROUGH OF JUNEAU
TO:	Adjacent Property Owners	PROPERTY OWNER:	CITY & BOROUGH OF JUNEAU
HEARING DATE:	August 11, 2009	PROPERTY ADDRESS:	120 SAVIKKO RD
HEARING TIME:	7:00 P.M.	PARCEL CODE NUMBER:	2-D04-0-T32-005-0
PLACE:	ASSEMBLY CHAMBERS Municipal Bldg. 155 South Seward St., Juneau, Alaska 99801	SITE SIZE:	0
		ZONING:	WI
		ACCESS:	SAVIKKO RD

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Eric Feldt at 586-0764 or email: eric_feldt@ci.juneau.ak.us

Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm.



City & Borough of Juneau • Docks & Harbors
155 S. Seward Street • Juneau, AK 99801
(907) 586-0292 Phone • (907) 586-0295 Fax

Port of Juneau

July 16, 2009

Eric Feldt, Planner
Community Development Department
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Re: Douglas Boat Harbor Renovation

Dear Mr. Feldt;

The CBJ Docks and Harbors Department has been in the process of planning and permitting the renovation of the Douglas Harbor over the past few years. In May 2007 the Planning Commission approved a city project review (CSP2007-00005) and a variance (VAR2007-00012) for the removal and replacement of the moorage float system in the old section of the harbor.

In June 2007, during the Corps of Engineers permitting process, trace amounts of mercury were identified in the sediments of the harbor which measured slightly above screening levels for west coast development. This triggered a comprehensive testing regime to determine toxicity of the spoils and analysis of impacts for the disposal proposal.

The effort to sample, test, and analyze the full impacts of the mercury issue, consultation with numerous state and federal agencies, has taken a significant amount of time. The work was recently completed and submitted to the Corps of Engineers for completion of the permitting process. It is anticipated that a determination will be rendered this summer.

Due to the time it has taken to address this unforeseen issue the project has not moved forward on the original schedule and the past Planning Commission approvals have expired. The project scope remains the same and the funding is in place such that we anticipate construction to begin this fall.

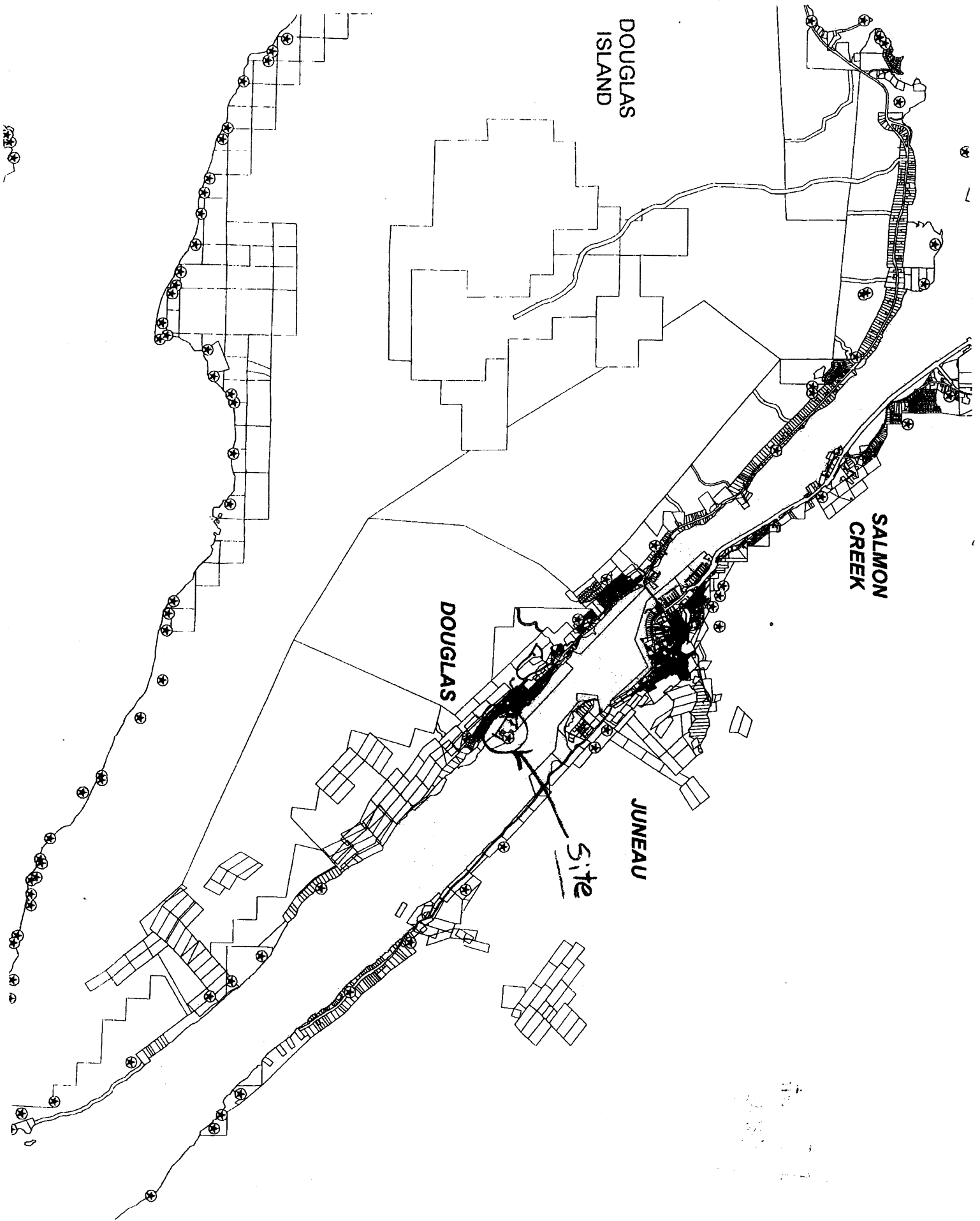
Due to the unforeseen impacts of a prolonged permitting review by the Corps of Engineers we request that the city project review and variance be extended.

Thanks for your consideration. If you have questions or need further information please contact me at your convenience.

Sincerely;

Gary Gillette, AIA
Port Engineer

ATTACHMENT A



ATTACHMENT B

REVISIONS

REV	DATE	DESCRIPTION	DRAWN	CHECKED	APP'D

ENGINEERS, INC.
 1316 Chena Highway, Ste 110
 Juneau, Alaska 99801
 Phone: 907-586-2993
 Fax: 907-586-2997
 www.pnd.com

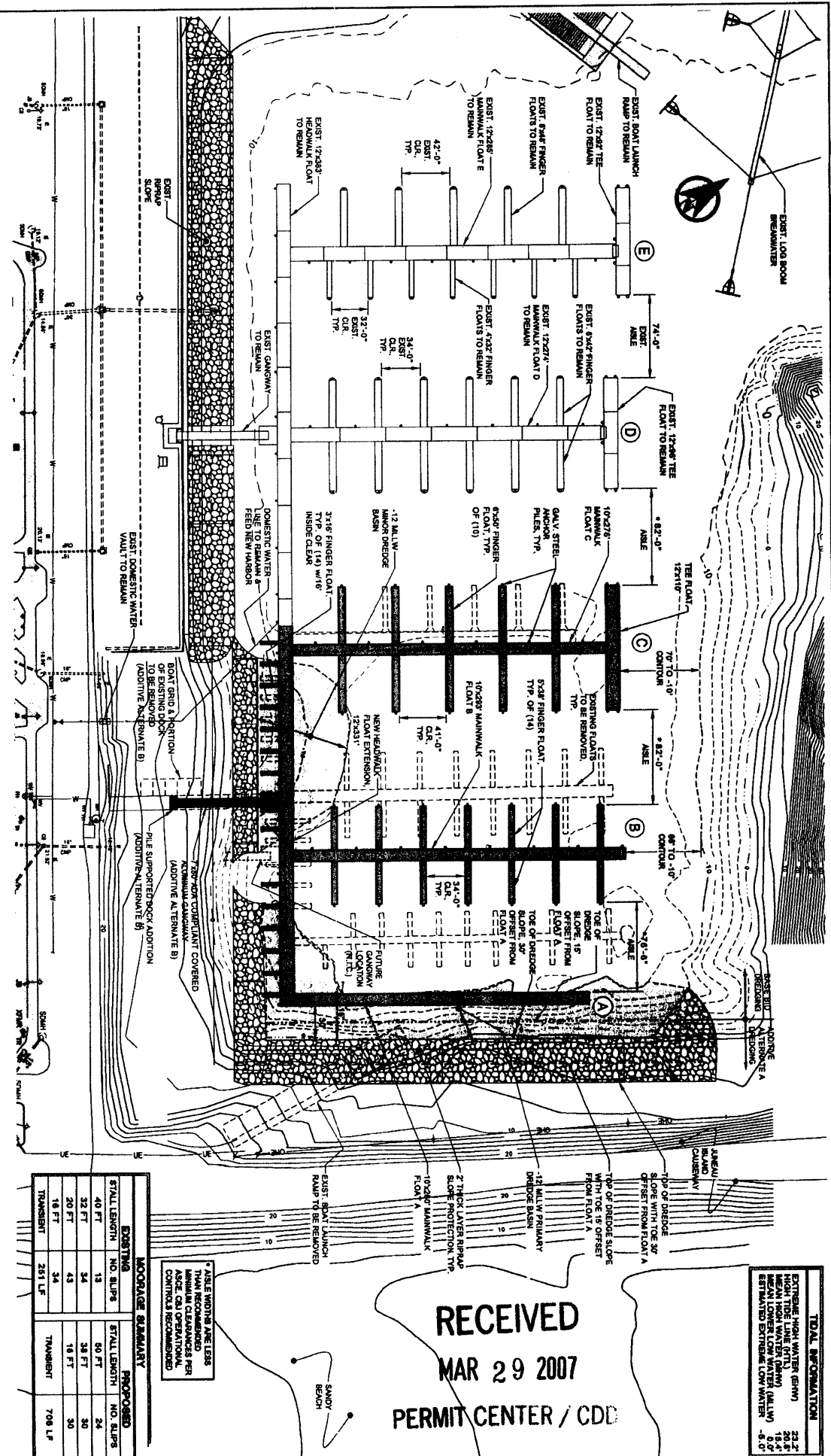
SCALE
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**OLD DOUGLAS HARBOR
 RENOVATION
 CBU PROJECT NO. DH 06-350**

SITE PLAN

1
 SHEET TITLE



MOORAGE SUMMARY

EXISTING	PROPOSED
STALL LENGTH	STALL LENGTH
NO. SLIPS	NO. SLIPS
40 FT	90 FT
32 FT	38 FT
20 FT	18 FT
16 FT	34
TRANSPARENT	708 LP

* AISLE WIDTHS ARE LESS THAN RECOMMENDED MINIMUM CLEARANCES PER ASCE FOR OPERATIONAL CONTRACTS RECOMMENDED

RECEIVED
MAR 29 2007
PERMIT CENTER / CDD

TOTAL INFORMATION

EXTREME HIGH WATER (EMHW)	23.2'
HIGH TIDE LINE (HTL)	20.6'
MEAN HIGH WATER (MHW) (M.L.W.)	19.4'
MEAN LOW WATER (MLW)	18.0'
ESTIMATED EXTREME LOW WATER	8.0'

**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: May 9, 2007

File No.: VAR2007-00012

PND Engineers, Inc.
Attn: Dick Somerville
9360 Glacier Highway, Ste. 100
Juneau, AK 99801

Application For: A Variance request to reduce minimum required setback from an eagle's nest.
Legal Description: ATS 14 FR
Parcel Code No.: 2-D04-0-T32-005-0
Hearing Date: May 8, 2007

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated May 2, 2007 and approve the Variance to be conducted as described in the project description and project drawing submitted with the application and with the following conditions:

1. There shall be no construction between the hours of 7pm – 7am.
2. Noise levels shall not exceed 65 decibels at the property line during the day or 55 decibels at night.
3. In-water construction shall be prohibited between March 15 through June 15, due to the spawning of salmon and herring in Anadromous streams.

Attachment: May 2, 2007 memorandum from Eric S. Feldt, Community Development to the CBJ Board of Adjustment regarding VAR2007-00012.


This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain a building permit for any and all improvements requiring such.


This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ Sec. 49.20.120).

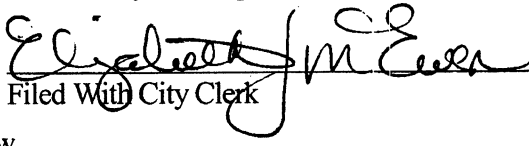
Effective Date: The permit is effective upon approval by the Board, May 8, 2007.

Expiration Date: The permit will expire 18 months after the effective date or November 8, 2008, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to permit expires.

PND Engineers, Inc.
File No.: VAR2007-00012
May 9, 2007
Page 2 of 2

Project Planner: 
Eric S. Feldt, Planner
Community Development Department


Daniel Bruce, Chairman
Planning Commission


Filed With City Clerk

5/10/07
Date

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice - 202-272-5434, or fax 202-272-5447, NW Disability Business Technical Center - 1-800-949-4232, or fax 360-438-3208.