

Chapter 65 of Title 49 is repealed in its entirety and the following, revised Chapter 65 is enacted in its stead.

- **ARTICLE I. - EXPLORATION AND MINING**

- **49.65.110 - Purpose.**

(a)

The purposes of this article are to encourage mining and investment in mining and to foster the development of a safe, healthy and sound mining industry while protecting the overall interests of public health, safety and the general welfare and meeting the land use and development requirements set out in Title 49 of this Code.

(b)

This article does not include regulation of surface or subsurface water, geothermal resources, sand or gravel, common varieties of construction aggregate, or natural oil, gas, coal and peat or associated byproducts recovered therewith.

(c)

The purpose of the review process is not to deny use or expressly prohibit mining, but, rather, the purpose of the review is to ensure mining activities meet the land use and development requirements set out in Title 49 of this Code.

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- **49.65.115 - Applicability.**

(a)

There is adopted for the purpose of defining the mining and exploration surface subsidence exclusion district in the City and Borough, the Mining and Exploration Surface Subsidence Exclusion District Maps A—F, dated June 5, 2006, as the same may be amended from time to time by the assembly by ordinance. These maps, as adopted or as amended, identify the area of the City and Borough within which surface disturbance (excluding access to mining properties) or surface subsidence in support of exploration and mining activities is prohibited. Except as provided herein, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b)

Except as provided in subsection (a), this article does not regulate subsurface mining within or without the district. It is not the intent of this article to unreasonably limit or nullify private property rights.

(c)

There is adopted for the purpose of regulating exploration and mining activities within the City and Borough the Urban/Rural Mining District Map, dated June 5, 2006, depicting the Urban and Rural Mining Districts, as such may be amended from time to time by the assembly by ordinance.

- (i) Mines located in the Rural Mining District which will undergo environmental review by state agencies, federal agencies, or both, as determined by the director, shall not be subject to [Chapter 49.65](#), and shall be permitted as allowable uses pursuant to CBJ [49.15.320](#). With respect to mines in the rural mining district, the planning commission may impose conditions pursuant to CBJ [49.15.320](#)(f)(1)—(8) and additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 4, 1989; Serial No. 2003-27am, § 2, 6-16-2003; Serial No. 2006-15, § 16, 6-5-2006)

- (ii) A Mine located in the Urban Mining District that undergoes, or has undergone, an environmental review by state agencies, federal agencies, or both, and has received state or federal permits, or both, shall be permitted as a conditional use pursuant to CBJ 49.15.330. The planning commission may impose conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion that are substantially similar to conditions imposed on other entities in the City and Borough.

- **49.65.155 – Summary Approval.**

(a)

Upon request of the applicant, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

- (i) the mine is located entirely outside the roaded service area established in CBJ 01.30.320;
- (ii) the application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);
- (iii)

the proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv)

the proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(b)

The director shall make the determination required by this section within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the applicant, the time for determination may be extended for up to 20 additional days after submittal by the applicant of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(c)

Planning commission review.

(i)

The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii)

If the commission rejects the proposed summary approval, it may:

(A)

return the matter to the director for further consideration of whether the director, in consultation with the applicant, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(B)

direct that the proposed change be processed by the department as an application for an allowable use permit for which the commission may impose conditions under CBJ [49.15.320](#)(f)(1)—(8) and such additional conditions as are necessary to reduce to non-significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 12, 1989; Serial No. 2003-26(am), § 2, 6-9-2003)

- **49.65.160 - Enforcement.**

This article shall be enforced in accordance with chapter 49.10, article VI and section 49.65.185.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 13, 1989)

- **49.65.165 - Appeal.**

Any person who is aggrieved by a decision of the department or the commission with respect to this article, other than one under section 49.65.160, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

(Serial No. 87-49, § 2, 1987; Serial No. 89-47am, § 14, 1989)

- **49.65.185 - Suspension or revocation of a Permit**

(a) The commission may suspend or revoke the Conditional Use permit issued under this article upon a determination by the commission that a Federal or State permit previously issued to the Mine or Mining Exploration operation has been suspended or revoked.

(b) The commission may suspend or revoke the Conditional Use permit issued under this article for a substantial violation or repeated violations of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

49.65.190 - Effect of article on operations in annexed territory.

Mines and mining exploration operations occurring in territory annexed by the City and Borough which have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a permit under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements, of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator.

(Serial No. 89-47am, § 19, 1989)

SECTIONS REMOVED FROM CURRENT MINING ORDINANCE

INTRODUCTION: The purpose of this Memorandum is to explain why sections of the current Mining Ordinance should be removed. In the main it is because they duplicate, and thus add additional process layers, to what is required by Federal and State law and existing law. By doing so they increase the delay and cost of mining exploration and mining within the CBJ along with opportunities for a multi-layered sequence of litigation.

Accordingly, to avoid duplication and added delay and added litigation (to say nothing about the tremendous amount of staff time it would take to review an application under the Mining Ordinance process described below) the proposal is for CBJ staff to simply check with the relevant Federal and State regulatory agencies to determine whether or not the applicant has the needed permits. If so, the application would be submitted to the Planning Commission to decide whether or not to issue a conditional use permit.

The specific wording of the applicable Federal and State Laws and Regulations may be different in some cases from the wording of the deleted requirements of the Mining Ordinance listed below, but the environmental protections are substantially the same.

The CBJ does have the power to apply more stringent standards than those set out in Federal and State law. Indeed, the vague and undefined terms and standards used in the Mining Ordinance would allow CBJ staff to interpret them more stringently. However, the Mining Ordinance itself states that it is sufficient for the two operating mines within the CBJ to be regulated by their Federal and State permits. (CBJ 49.65.190). The proposal is for all mines within the CBJ to be regulated by the same requirements.

DNR's Office of Project Management and Permitting website partially lists Kensington and Greens Creek Mine permits, plans, and findings. These are incomplete lists of the State and Federal permits required for a mining operation in the City and Borough of Juneau.

Kensington:

<http://dnr.alaska.gov/mlw/mining/largemine/kensington/>

Greens Creek:

<http://dnr.alaska.gov/mlw/mining/largemine/greenscreek/>

The Current reclamation bonds at the mines are: Kensington \$28,727,011; Greens Creek \$72,831,187.

CURRENT LAW:

FEDERAL LAND WITHIN THE CBJ: 36 Code of Federal Regulations Part 228 governs mining activity, including exploration, on Federal Lands. Plan of Operations (PoO) within the City and Borough of Juneau (CBJ). Forest Service Manual (FSM) 2840.4 requires a Plan of Operations in advance of such exploration or mining. FSM 2840.5 (3) defines a PoO as follows:

“A written description of planned, on-the-ground mineral activities, including reclamation, to be conducted by the mineral operator for either locatable, leasable, or common variety minerals.” The PoO must be supported by a National Environmental Policy Act (NEPA) review, usually an Environmental Impact Statement (EIS).

The Forest Service requirements for environmental protection are set out in 36 C.F.R § 228.8:

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a)Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857*et seq.*).

(b)Water Quality. Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151*et seq.*).

(c)Solid Wastes. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d)Scenic Values. Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e)Fisheries and Wildlife Habitat. In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f)Roads. Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values.

(g)Reclamation. Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

- (1) Control of erosion and landslides;
- (2) Control of water runoff;
- (3) Isolation, removal or control of toxic materials;

- (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
- (5) Rehabilitation of fisheries and wildlife habitat.

Financial Warranties are required by 36. C.F.R. §228.51.

STATE LAND WITHIN THE CBJ: Article VIII, Section 11 of the Alaska Constitution provides: “Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State, which upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery location and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases and transferable licenses for their extraction. ”

AS 38.05.125 (a) reserves all subsurface minerals to the State along with the surface rights to extract them. This has been required to be part of every grant of State land or interest in State land since Statehood. Thus, with few exceptions (such as pre-Statehood patented mining claims and Regional Corporation subsurface ownership), all non-Federal land within the CBJ is governed by State mining laws.

The State’s Mining Law (AS 38.05.185 et seq.) and supporting regulations (11 AAC chapter 86) govern mining on all State Land within the CBJ. 11 AAC 86.150 requires either a land use permit or plan of operations pursuant to 11 AAC 86.800 before “conduct[ing] mineral exploration or development activities.”

AS 27.19.020 requires that: “A mining operation shall be conducted in a manner that prevents undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.” 11 AAC Chapter 97 sets out rigorous standards for reclamation, a reclamation plan, and financial warranties.

CBJ LAND: A Lease will be required from the CBJ in those cases in which it owns the subsurface rights as well as surface rights (e.g. the AJ and Treadwell Mines). Like any other mining lease, the Lease will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties.

PRIVATE LAND WITHIN THE CBJ: To the extent a private landowner owns the subsurface rights as well as surface rights (the most significant being Goldbelt’s 4000 acres of surface land ownership and Sealaska’s underlying 4000 acres of subsurface land ownership) their Lease with the mining company will prescribe the terms and conditions under which the Lessee may be allowed to conduct exploration and mine, including reclamation and financial warranties. Activities on their land require all applicable Federal and State permits and cannot create a nuisance on adjacent land.

REGULATIONS GOVERNING ALL LAND OWNERSHIPS: A Clean Water Act § 404 permit from the Corps of Engineers is required for mining exploration and mining in wetlands,

which are hard to escape in the CBJ. The Permit must be supported by a NEPA review, usually an Environmental Assessment (EA).

An Alaska Pollution Discharge Elimination System (APDES) permit will be required under AS 46 Chapter 5 for the discharge of water to the waters of the United States or the State of Alaska. An APDES permit is required whenever there is a discharge of pollutants to surface water, including the ocean, lakes, rivers, and streams. Facilities permitted under the APDES Program include domestic wastewater treatment plants, log storage and transfer facilities, seafood processors, fish hatcheries, mines, and oil and gas facilities. APDES permits are also required for storm water, cooling water intakes and discharges, munitions, and pretreatment of industrial wastes discharged to municipal wastewater systems.

An APDES permit covers both point sources and nonpoint sources. All such permits are subject to Spill Prevention (SPCC) and Stormwater Plans (SWPPP) which act as permits for petroleum products storage and stormwater management.

An Alaska Air Permit will be required under AS 46 Chapter 14 and 18 AAC Chapter 50. AS 46.14.120 (a) and (b) require an air permit before constructing or operating a stationary source. Depending on the worst-case emissions forecast this could entail a "Minor" permit or Prevention of Significant Deterioration (PSD) permit. In any event a permit to construct based on design emissions would precede an operating permit based on actual emissions.

The Fishway (or Fish Passage Act AS 16.05.841), requires that an individual or government agency notify and obtain authorization from the Alaska Department of Fish & Game (ADF&G), Division of Habitat for activities within or across a stream used by fish if it is determined that such uses or activities could represent an impediment to the efficient passage of resident or anadromous fish.

The Anadromous Fish Act (AS 16.05.871- .901) requires that an individual or government agency provide prior notification and obtain permit approval from ADF&G before altering or affecting "the natural flow or bed" of a specified waterbody, or fish stream. All activities within or across a specified anadromous waterbody require approval from the ADF&G Habitat Division, including construction; road crossings; gravel removal; mining; water withdrawals; the use of vehicles or equipment in the waterway; stream realignment or diversion; bank stabilization; blasting; and the placement, excavation, deposition, or removal of any material.

The location of specified anadromous waterbodies is contained in the "Catalog of Waters Important for the Spawning Rearing or Migration of Anadromous Fishes." The Anadromous Waters Catalog is updated annually, and adopted into regulation (5 AAC 95.011) after public review; it is the legal record of known anadromous fish streams in the state.

Solid wastes are regulated in the State of Alaska under two main bodies of regulations:

- The Resource Conservation and Recovery Act (RCRA) federal regulations contained in Title 40 Code of Federal Regulations (CFR), Parts 260 to 279.
- The State of Alaska regulations contained in 18 AAC 60, Solid Waste Management.

Hazardous wastes are regulated by the U.S. Environmental Protection Agency (EPA), Region 10 in Alaska, in accordance with RCRA regulations. Alaska does not have the authority to administer hazardous waste regulations and, therefore, defers to federal regulations. Non-hazardous solid wastes, tailings, and waste rock are mainly managed under the state regulations in 18 AAC 60, which includes permitted solid waste inert landfills.

A Toxic Release Inventory (TRI) of tailings is required by Section 313 of EPCRA (Emergency Planning and Community Right to Know Act of 1986) at 42 U.S.C. paragraph 11001 et. seq. EPCRA is part of the Superfund Amendments and Reauthorization Act (SARA). TRI was supplemented with waste reduction rules contained in the Pollution Prevention Act of 1990 at Section 6607 42 U.S.C. paragraph 13101 et. seq.

AS 46.03.74 prohibits oil pollution: “A person may not discharge, cause to be discharged, or permit the discharge of petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or a residuary product of petroleum, into, or upon the waters or land of the state except in quantities, and at times and locations or under circumstances and conditions as the department may by regulation permit... .” Thus, any facility storing petroleum products must have an SPCC Plan. If there is a potential to release to Marine water a SPCC Plan must include a means to clean up, which under the Oil Pollution Act of 1990 involves contracting for regional cleanup cooperative services with a Response Contractor – in Southeast Alaska this means SEAPRO.

AS 46.03.822 imposes strict liability for a spill of a hazardous substance, the definition of which includes oil. The Comprehensive Environmental Response, Compensation, and Liability Act 42 USC §§ 9601-9675 is the Federal counterpart of AS 46.03.822. All producers of hazardous waste, which would include any operating mine, must obtain a producer ID and file reports with EPA under RCRA.

Under certain conditions DEC may authorize an Integrated Waste Management Permit (AS 46.03.100) that includes air, water, land, solid waste management coordination in order to allow for cooperative oversight by DEC and DNR to ensure consistent application of the two agencies rules and regulations in an enforceable document.

AS 46.03.820 Gives the Commissioner of DEC emergency powers to immediately terminate an activity that poses an imminent threat of irreparable damage to natural resources or the environment: “When the department finds, after investigation, that a person is causing, engaging in, or maintaining a condition or activity that, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior

hearing, order that person by notice to discontinue, abate, or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated, or alleviated.”

AS 46.17.020 requires the DNR to employ a professional engineer to “supervise the safety of dams and reservoirs” in Alaska. A dam is defined as any obstruction in a waterbody greater than 20 feet in height (downstream face to crest), or 10 feet in height and impounding 50 acre-feet or more.

The State Dam Safety Engineer is the authorized representative of the commissioner of ADNR responsible for the following: Adopting regulations and issuing orders necessary for ensuring dam safety; Providing routine administration of the ADSP and the Dam Safety and Construction Unit (Dam Safety) of the ADNR; Classifying dams based on the potential hazard to lives and property created by the dam; Approving the design, construction, operation, and inspection of dams through “certificates of approval,” which are issued based on specific information submitted to Dam Safety for review; Identifying unsafe dams that compromise the mission of the ADSP, and taking the necessary steps to mitigate those risks; Raising the level of compliance for jurisdictional dams that are out of compliance with state dam safety regulations; Enforcing the dam safety statutes and regulations through appropriate legal actions, if necessary, including issuing injunctions, assuming operational control of the dam, breaching the dam, or other activities necessary to mitigate the risk; Providing information and educational material about dams in Alaska and dams in general, including the Alaska Dam Inventory, Training Aids for Dam Safety, conference proceedings, and other resources.

AS 27.19.030 requires a Reclamation Plan: a) Except as provided in AS 27.19.050 , a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.

(b) In reviewing a reclamation plan for state, federal, or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and landowner, uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

AS 27.19.040 requires Reclamation Financial Assurance. (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine. Subsection (b) provides a statewide bonding pool for mining operations as an alternative to individual financial assurance.

11 AAC Chapter 97 sets out in great detail what is required to comply with AS 27.19.020, .030, and .040.

49.65.120 EXPLORATION NOTICES, FINANCIAL WARRANTIES, AND PROCEDURES, RELEASE OF FINANCIAL WARRANTIES FOR EXPLORATION NOTICES

Obligating companies to obtain what amounts to a permit to simply *explore* for minerals along with a financial warranty for clean-up duplicates what is required by Current Law.

Current Law requirements are known: On Forest Service land within the CBJ a Notice of Intent must be filed under 36 C.F.R. § 228.4 and operations must be conducted pursuant to 36 C.F.R. § 228.8.

What are the CBJ criteria for conducting exploration and reclamation? While subsection (a) states: “In conducting exploration operations, the operator shall comply with all applicable federal, state and *City and Borough laws, rules and regulations*, and such compliance shall be a condition of the effectiveness of the authority to operate under an exploration notice,” there are no clear requirements for a CBJ exploration permit. Will the CBJ be passing ordinances dealing with the manner in which exploration will be conducted? Will the CBJ be adding and training staff to conduct this review?

The extra set of permitting allows an opponent of the mine exploration to sue an agency for improvidently granting a permit under Current Law, and, if she/he loses, to sue the CBJ under the Mining Ordinance for improvidently granting the equivalent permit.

What if the Forest Service approves a PoO with which CBJ staff disagrees and CBJ staff denies the CBJ exploration permit on the ground that the applicant has failed to comply with federal law? This puts the applicant and the Federal agency in the position of potentially suing the CBJ in support of his/her Federal permit. This potentially adds layers of litigation to that which already exists with the issuance of Federal and State permits.

49.65.120(b) requires that reclamation of exploration activities be “completed in accordance with the standards of 49.65.135(b).” Except for private landowners holding both the surface and subsurface lands who are not operating in wetlands or discharging water from their operation or impacting a fish stream, reclamation is already required by Current Law described above. (See 36 C.F.R. Part 228 and 11 AAC Chapter 97).

In short, this provision which duplicates State and Federal requirements and will require the CBJ to enact rules governing exploration and reclamation will have a chilling effect on exploration in the CBJ.

49.65 125 SMALL MINE PERMITS, FINANCIAL WARRANTIES AND PROCEDURES

Again, this provision duplicates what is required by Current Law. (See 36 C.F.R. Part 228, 11 AAC 86.800, and 11 AAC Chapter 97).

This provision requires a small mine operator to prepare a description of “the potential environmental, health, safety and general welfare impacts of the operation.” How will the CBJ staff determine whether this vague, undefined language has been met? Will the CBJ be passing ordinances defining these terms?

Subsection (b) says that a small mine application shall include “a description and timetable of the mining operation, the plan for reclamation and the potential environmental health, safety, and general welfare impacts of the operation.” This language is so vague that at the end of the day it will mean whatever CBJ staff or a Court says it means.

Subsection (c) says that the staff review of a small permit mine application will include a “determination: whether air and water quality standards will be maintained in accordance with federal, state and city borough laws, rules and regulations.” On its face this section authorizes staff to determine that Federal or State agencies got it wrong when they decided that Federal and State air and water quality standards have been met and to insert staff-determined requirements into the CBJ permit.

Subsection (c) provides that if the CBJ staff is satisfied that the application contains sufficient information and analysis it is then presented to the Planning Commission for review. This creates another duplicate review along with the potential opportunity for litigation.

Subsection (d) states that “if the department determines that the proposed mining operation does not meet the standards of sections 49.65.135 and 49.15.330” the applicant can revise its plan or allow it to go forward to the Planning Commission with the negative recommendation from staff. The 49.65.135 standards duplicate what is already required by Current Law. (See discussion of 49.65.135 below).

These requirements are a recipe for endless NEPA - like litigation. For example, did the applicant fully consider and describe those environmental impacts that opponents perceive are “potential?” What are the criteria by which CBJ staff will determine whether the applicant’s mitigation measures will in fact “mitigate the adverse effects of such impacts?”

Mine opponents will put pressure on CBJ staff to find that the applicant needs to do more to comply and will sue on the ground that the applicant failed to meet the opponent’s more ambitious requirements. This is all in addition to putting pressure on State and Federal agencies to increase requirements and to sue those agencies when that pressure yields insufficient results.

The proposed changes to the Mining Ordinance would have the Planning Commission determine whether an applicant had the requisite Federal and State permits as part of its decision whether or not to issue a conditional use permit.

49.65.130 LARGE MINES, FINANCIAL WARRANTIES AND PROCEDURES

Subsection (b) requires that the Large Mine Permit application be submitted in a form that can be reviewed under the standards of subsection 49.65.135 (a). Again, the standards listed in 49.65.135 (a) duplicate those already required by Current Law. (36 C.F.R. Part 228, FSM 2840.4 and 11 AAC 86.800).

Subsection (b) also requires the applicant to provide “additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface, labor force characteristics and timing, payroll projections, anticipated duration of the mining operation, construction schedules, infrastructure description,

and other information reasonably requested by the department in the pre-application conference held pursuant to subsection 49.15.330(b).” Subsection (c) requires the applicant to submit a socioeconomic impact assessment.

This is similar to the environmental and socio-economic information that would be included in a Forest Service EIS supporting a mining Plan of Operations and a DNR permit application for a land use plan or plan of operations. (11 AAC 86.150). It is information which the CBJ could require in the lease of the AJ or Treadwell Mines. It may be information which a private owner of the surface and subsurface estate might not wish to provide to the CBJ.

The applicant is also required to submit copies of permit applications submitted to other agencies. In short, these provisions assume that CBJ staff will have the expertise to review feasibility studies and mining plans and information in Federal and State permit applications.

Like the Small Mine section above, this Large Mine section describes the CBJ staff’s permit approval and disapproval process and recommendation for a financial warranty.

Subsection (h) provides that if an EIS is required the large mine permit will not be presented to the Planning Commission “until publication of the final environmental impact statement. The department’s recommendation may include such conditions or stipulations as the department seems to be reasonably necessary to mitigate any adverse environmental, health, safety or general welfare impacts which may result from the proposed mining operation.” In other words, CBJ staff reserves the right to add requirements to the EIS.

Subsection (h) leaves open the question of what happens if there is litigation concerning the EIS. Is the staff recommendation delayed until the litigation is complete? If so, even if an applicant prevails in NEPA litigation the application returns to CBJ staff which may add additional requirements before submitting the application with staff recommendations to the Planning Commission for review. Whatever decision is reached by the Planning Commission would itself be subject to litigation. In short, the Mining Ordinance process could extend for years after the Federal and State process.

49.65.135 STANDARDS FOR ISSUING PERMITS, CONDUCT OF OPERATIONS

This section generally requires that the applicant maintain air and water quality “in accordance with federal, state and City and Borough laws, rules and regulations.” What air and water quality rules and regulations does the CBJ have in addition to those required by federal and state law? Would such rules and regulations have to be enacted by the Assembly before an application could be filed under the Mining Ordinance?

Subsection (a)(4) requires the operator “to minimize to the extent reasonably practicable safety hazards and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion.” These matters should be taken up in the conditional use permit issued by the Planning Commission.

Subsection (a)(7) requires the operator to “negotiate and enter into a mitigation agreement with the city and borough, which agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts, including direct impacts and indirect impacts. The operator shall be responsible for mitigating the direct impacts. The city and borough shall be responsible for mitigating indirect impacts except for the costs of mitigating specific indirect impacts are filed by the manager to (A) exceed the amount of any city and borough nonproprietary revenue increase attributable to the mining operation; and (B) require direct and significant increase in local taxes or fees to adequately mitigate the impact.” What does this mean? What does it require the applicant and the CBJ to do?

Subsection (b) describes how reclamation is to be performed. This duplicates what is required by Current Law. On Federal land the mine operator is required to return the mined land to pre-existing uses or higher. State reclamation rules apply to public and private land and also requires that the land must be returned to “a stable condition.” A “stable condition” is defined by 11 AAC 97.200(a). There is an exception for private landowners who may choose to take advantage of mine facilities for future industrial uses and associated employment opportunities.

49.65.140 FINANCIAL WARRANTY

This section duplicates the bonding requirements of 36 C.F.R. § 228.8(g), AS 27.19.040, and 11 AAC 97.400.

49.65.145 TERM OF NOTICES AND PERMITS; TEMPORARY CESSATION

This provision duplicates the term of notices and permits and temporary cessation in Federal and State Current Law. Accordingly, this provision should be limited to the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

Under state law, temporary closure requires a new plan-of-operations with modifications to any and all permits to reflect changes in the operating situation. Discharges via the Waste Management Permit may be severely limited or curtailed to reflect the much reduced impacts allowed under the temporary cessation situation.

The conditional use permit should reserve the right to modify or terminate the permit depending on the significance of any change to a Federal or State permit. The conditional permit should also reserve the right to suspend its effect during a temporary cessation.

49.65.150 ANNUAL REPORTS; MONITORING; MONITORING FEE

This should be converted into a Conditional Use Permit provision requiring that an applicant submit to CBJ staff copies of reports required by its Federal and State permits.

49.65.155 (A) AND (B)(1) TECHNICAL REVISIONS. [SUMMARY APPROVAL (49.65.155 (B)(2)) REMAINS]

49.65.160 ENFORCEMENT

This section should be restored to the Mining Ordinance.

49.65.165 APPEAL

This section should be restored to the Mining Ordinance.

49.65.170 RELEASE OF WARRANTIES FOR MINING OPERATIONS

This provision duplicates Current Law. State and Federal reclamation laws allow for reclamation warranty recalculation every five years or whenever significant changes are made to the mining operation that would materially impact closure costs. (11 AAC. 97.435). These rules allow for partial warranty release as closure tasks are successfully completed.

49.65.175 SUCCESSION OPERATIONS

This provision duplicates Current Law. Transfer of permits to a new operator is subject to approval by all Federal and State regulatory agencies and written acceptance of permit provisions by the new operator. It also requires posting of a new warranty after review and recalculation – as necessary.

Accordingly, the issue of “successor operations” should be limited to transfer of the conditional use permit and contained as a provision in the conditional use permit. It should not be included in the Mining Ordinance.

49.65.180 CONFIDENTIALITY

This section should be restored to the Mining Ordinance.

49.65.185 SUSPENSION OR REVOCATION OF NOTICES AND PERMITS

This section should be rewritten to say that the Commission may suspend or revoke the Conditional Use permit if a Federal or State permit is suspended or revoked. In addition the Commission may also suspend or revoke the Conditional Use permit for violation of its traffic, noise, dust, light, surface subsidence, avalanche, landslide, or erosion requirements.

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
49.65.120 Exploration <ul style="list-style-type: none"> • Notice of intent to explore • Reclamation plan • Financial warranty 	Forest Service Land	<ul style="list-style-type: none"> • 36 C.F.R Part 228 • Plan of Operation to explore – FSM 2840.04 • Plan of operation includes reclamation 36 C.F.R.228.8(g) • PoO supported by NEPA document • Financial warranty required by 36 C.F.R 228.51 • CWA { 404 Permit for Wetlands 	<ul style="list-style-type: none"> • APDES Permit for Discharges to State or Federal Waters (46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
	State Land – Surface and/or Subsurface (AS38.05.125)	<ul style="list-style-type: none"> • CWA{404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • AS27.19.020-.03 (Reclamation) • AS27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • APDES permit for Discharge to State or Federal Water (46.03.050 - .120) • Title 26 Anadromous Fish (16.05.841) (16.05.871-.901) • Plan of Operations AS38.05.185 et seq. • <i>Nunamta v. DNR</i> – Š ‡ Ž f • f — ’ ” ‡ • ‡ ‘ — ” — • ’ ‡ ... ^ ‹ ... f Ž Ž › ” ‡ “ — ‹ ” ‡ ‡ f u r ‡ f › • ‘ — ‹ ... ‡ f • ... ‘ • • ‡ • — ’ ‡ ‡ ‹ ‡ f • ‡ ^ (• f • ... ‹ f Ž ™ f ” ” f • — ‹ ‡ • ‹ • ‹ ... ‡ Ž Ž f • ‡ ‘ — f • ‡ • ‡ ‡ ” • ‹ — ^ ‘ ” ‡ š ’ Ž ‘ ” f — ‹ ‘ • ä
	CBJ as Owner of Surface and Subsurface – Assume	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
	Key requirements will be set out in lease		<ul style="list-style-type: none"> Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • <i>Nunamta v. DNR</i> – Š ‡ Ž f • • f — ’ ” ‡ • ‡ ‘ — ” — • ’ ‡ ... ‹ ^ ‹ ... f Ž Ž › ” ‡ “ — ‹ ” ‡ † f † f › • ‘ — ‹ ... ‡ f • † ... ‘ • • ‡ • — ’ ‡ ” ‹ † f • † ^ ‹ • f • ... ‹ f Ž TM f ” ” f • — ‹ ‡ • ‹ • ‹ • ... ‡ Ž Ž f • ‡ f • † • ‡ ‡ ” ‹ ^ ‘ ” ‡ š ’ Ž ‘ ” f — ‹ • ä TM ‹ Ž Ž „ ‡ ” ‡ “ — ‹ ” ‡ † — ‘ ... ” ‘ • • — f — ‡ — ‹ † ‡ Ž f • † • ä
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	<ul style="list-style-type: none"> CWA §404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901)
49.65.125 Small Mine Permits <ul style="list-style-type: none"> Right to use area Timetable, mining plan, reclamation plan, Potential environmental, health, safety and general welfare 	Forest Service Land	<ul style="list-style-type: none"> 36 C.F.R Part 228 Plan of Operations (NEPA Review) CWA 404 Permit for Wetlands Plan of operation includes reclamation (228.8(g)) Financial warranty required by 36 C.F.R 228.51 36 C.F.R. 228.8 covers potential mining impacts as part of PoO Toxics Release Inventory for 	<ul style="list-style-type: none"> APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) Potential air permit AS46.14.120(a) and (b) SPCC Plan SWPPP (Stormwater) Plan MLUP to cross tidelands

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
impacts, and mitigation plan <ul style="list-style-type: none"> • Mitigate impact of mining operation • No subsidence • Financial warranty 		Tails (EPCRA)(PPA of 1990)	
	State Land: Surface and/or subsurface (AS38.05.125)	<ul style="list-style-type: none"> • CWA 404 Permit for Wetland NEPA Review (usually EA) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation) • AS 27.19.040 (financial warranty) • 11AAC Chapter 97 implements AS27.19.020-.040 • Plan of Operations or permit AS38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Potential air permit AS46.14.120(a) and (b) • Solid Waste Plan 18AAC Chapter 60 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS16.20.034
	CBJ as Owner of Surface and Subsurface put Key Requirements in Lease	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (usually EA) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) • Potential air permit AS46.14.120 • SPCC Plan • Fish Habitat Permit AS

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			16.05.841, AS16.05.871-.901 • MLUP for tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	• CWA {404 Permit for Wetland NEPA Review (usually EA) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990)	• APDES Permit for Discharges to Federal or State water (AS 46.03.050 - .120) • Potential air permit AS46.14.120 • SPCC Plan • SWPPP (Stormwater) Plan • Fish Habitat Permit AS 16.05.841, AS16.05.871-.901 • MLUP to cross tidelands
49.65.130 Large Mine Permits <ul style="list-style-type: none"> • Description and timetable, • reclamation • Hazardous waste disposal • Health, safety and general welfare impacts • Feasibility study info • Application to other agencies • Socioeconomic report • Environmental impacts • No subsidence 	Forest Service Land	<ul style="list-style-type: none"> • 36 C.F.R Part 228 • Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 • EIS includes socio-economics • PoO includes reclamation (228.8(g)) • Financial warranty required by 36 C.F.R 228.51 • CWA 404 Permit for Wetlands • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • SPCC Plan • SWPPP (Stormwater) Plan • Solid Waste Permit (18 AAC Chapter 60) • Dam Safety AS 46.17.020 • MLUP to cross tidelands
	State Land – Surface and/or Subsurface (AS38.05.125)	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
		Tails (EPCRA)(PPA of 1990)	<ul style="list-style-type: none"> reclamation) AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) Air permit AS46.14.120(a) and (b) Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) Dam Safety AS 46.17.020 SPCC Plan SWPPP (Stormwater) Plan MLUP to cross tidelands Mendenhall Game Refuge AS 16.20.034
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease	<ul style="list-style-type: none"> CWA §404 Permit for Wetland NEPA Review (EA or EIS) Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) Air permit AS46.14.120(a)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
49.65.135 Standards for Issuance of Permits: <ul style="list-style-type: none"> • Mitigate environmental 	Forest Service Land	<ul style="list-style-type: none"> • 36 C.F.R Part 228 • Plan of Operations (NEPA Review - EIS) addressing potential environmental impacts set out in 36 C.F.R. 228.8 • EIS includes socio-economics 	<ul style="list-style-type: none"> • APDES Permit for Discharges to Federal and State waters (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
Health, safety and general welfare impacts <ul style="list-style-type: none"> • Meet air and water requirements • Hazardous and toxic waste • Reclamation • Local impacts 		<ul style="list-style-type: none"> • PoO includes Reclamation (228.8(g)) • Financial warranty required by 36 C.F.R 228.51 • CWA 404 Permit for Wetlands • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • SPCC Plan • SWPPP (Stormwater) Plan • Solid Waste Permit (18 AAC Chapter 60) • Dam Safety AS 46.17.020 • MLUP to cross tidelands
	State Land – Surface and/or Subsurface (AS38.05.125)	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty) • Plan of Operations or permit AS 38.05.185 et seq.11 AAC6.800 • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • SWPPP (Stormwater) Plan • MLUP to cross tidelands • Mendenhall Game Refuge AS 16.20.034
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock) • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)	<ul style="list-style-type: none"> • CWA §404 Permit for Wetland NEPA Review (EA or EIS) • Toxics Release Inventory for Tails (EPCRA)(PPA of 1990) 	<ul style="list-style-type: none"> • APDES permit for Discharge to State or Federal Water (AS 46.03.050 - .120) • Title 16 protection for Anadromous Fish (16.05.841) (16.05.871-.901) • Air permit AS 46.14.120(a) and (b) • Solid Waste Plan (18AAC Chapter 60 – includes non-hazardous waste, tails, and waste rock)

CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			<ul style="list-style-type: none"> • Dam Safety AS 46.17.020 • SPCC Plan • SWPPP (Stormwater) Plan • MLUP to cross tidelands
49.65.140 FINANCIAL WARRANTY <ul style="list-style-type: none"> • Will consider financial warranty set by other agencies • Reserves right to increase if does not adequately protect the CBJ 	Forest Service Land	<ul style="list-style-type: none"> • Financial warranty required by 36 C.F.R 228.51 	<ul style="list-style-type: none"> • AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	State Land – Surface and/or Subsurface (AS38.05.125)		<ul style="list-style-type: none"> • AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) • AS 27.19.040 (financial warranty); 11 AAC (implements Financial

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CBJ Ordinance Requirement	Land Manager	Federal Requirements	State Requirements
			Warranty)
	CBJ as Owner of Surface and Subsurface – Assume Key requirements in lease		<ul style="list-style-type: none"> AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)
	Private Owner Surface and Subsurface (e.g. Goldbelt and Sealaska)		<ul style="list-style-type: none"> AS 27.19.020-.03 (Reclamation); 11 AAC 97.300 (implements reclamation) AS 27.19.040 (financial warranty); 11 AAC (implements Financial Warranty)