

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGIONAL LAND OFFICE
PRELIMINARY DECISION

ADL 209326

Northern Enterprises Boat Yard, Inc.

Application for Tidelands Lease

AS 38.05.075(c)

This Preliminary Decision (PD) is the initial determination on a proposed disposal of interest in state land and is subject to comments received during the 30-day public notice period. The public is invited to comment on this PD. The deadline for commenting is **5:00 PM February 19, 2021**. Please see the Comments section of this decision for details on how and where to send comments for consideration. Only the applicant and those who comment have the right to appeal the Final Finding and Decision (FFD).

Proposed Action:

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO) has received a request from Northern Enterprises Boat Yard, Inc. (NEBY) for a new tidelands lease for a term of 40 years. The lease application requests the addition of 0.288 acres, more or less, of state tidelands (referenced as “Parcel B”) to their current leasehold of 0.237 acres (referenced as “Parcel A”) for a total of 0.525 acres, more or less, for the purpose of extending their current dock and constructing a new pier adjacent to their current leasehold. A portion of the new construction will fall outside of state-owned tidelands on City of Homer tidelands. NEBY has received authorization from the City of Homer to construct on their tidelands and that authorization is outside the scope of this decision. The project area is in Kachemak Bay approximately four miles northeast of the Homer Spit in Homer, Alaska. The location of the project area is further described as being within the SE1/4 of Section 11, Township 6 South, Range 13 West, Seward Meridian, Alaska. NEBY is proposing to use this site for the construction, use, operation, and maintenance of a pier, and the continuing use of an existing dock and boat lift to provide services to vessel operators in the Kachemak Bay area. A map showing the proposed location is included as Figure 1.

SCRO is considering the issuance of a new 40-year lease to NEBY which would encompass the area held by their current lease and the area need for expansion, for the construction, operation, and maintenance of an additional pier and dock. Before issuance of a new lease, an Entry

Authorization (EA) would be issued allowing NEBY to build, survey, and appraise the expanded dock.

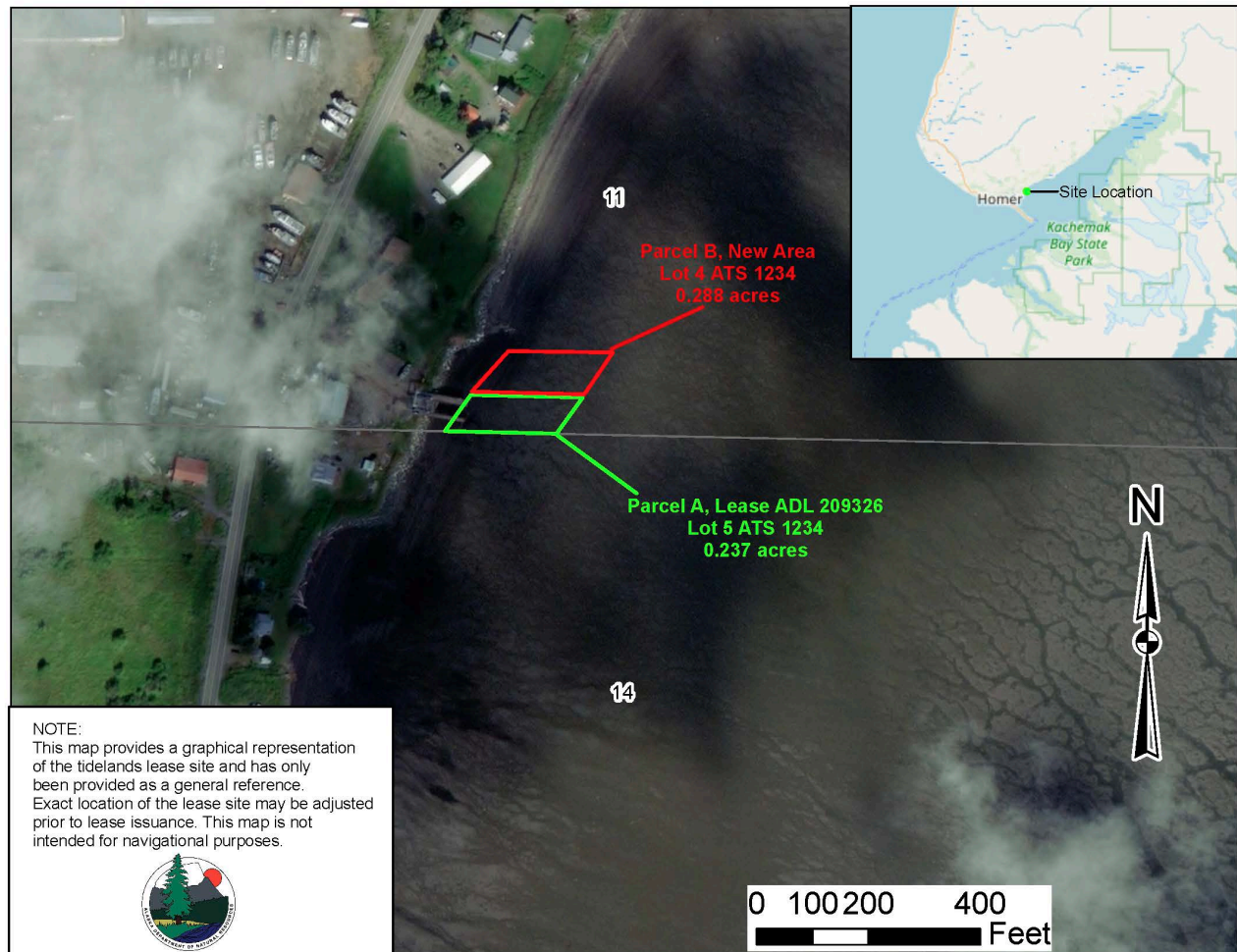


Figure 1: Overview Map of Project Area

Scope of Review:

The scope of this decision is to determine if it is in the State's best interest to issue NEBY a new lease, serialized as ADL 209326, encompassing approximately 0.525 acres, more or less, for a term of 40 years.

Authority:

This lease application is being adjudicated pursuant to AS 38.05.035(b)(1) and AS 38.05.035(e) Powers and Duties of the Director; AS 38.05.075(c) and 38.05.075(f) Leasing Procedures; and AS 38.05.945 Notice.

The authority to execute the PD, FFD, EA, and the lease has been delegated to the Regional Managers of DMLW.

Administrative Record:

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2000 Kenai Area Plan and other classification references described herein, and the casefile for the application and existing lease serialized by DNR as ADL 209326.

Legal Description, Location, and Geographical Features:

The state land where this proposed lease is located is described as follows:

- **Legal description:** Located within the SE1/4 of Section 11, Township 6 South, Range 13 West, Seward Meridian, Alaska.
- **Geographical location:** Kachemak Bay, four miles northeast of the Homer Spit
- **Approximate Lat/Long:** Lat 59° 39' 50.79" N, Long 151° 26' 20.24" W
- **Area geographical features:** Tidelands
- **Existing surveys:** Alaska Tidelands Survey 1234A, Lot 4 and Lot 5
- **Municipality/Borough:** City of Homer/ Kenai Peninsula Borough
- **Native Corporations/Federally Recognized Tribes:** Cook Inlet Region Inc.
- **Size:** Lot 4 (Parcel B), 0.288 acres, Lot 5 (Parcel A), 0.237 acres
- **Area Plan:** Kenai Area Plan (2000)

Title:

A DNR Title Report (RPT-11749) issued from DMLW's Realty Services Section attests that the State of Alaska holds fee title to the subject land under The Submerged Lands Act of 1953, subject to valid existing rights, including reservations, easements, and exceptions in the U.S. Patent.

Third Party Interests:

No encumbrances or third-party interests exist that would prevent the issuance of the lease.

Classification and Planning:

The project area is subject to the 2000 Kenai Area Plan (KAP), Region 7, Map 7C: Homer, Kachemak Bay, Management Unit 562A: Kachemak Bay Critical Habitat Area, designated as Habitat and Harvest which converts to the classification of Wildlife Habitat Land.

The KAP's stated Goals for Tidelands, Submerged Lands, and Shorelands as described in Chapter 2 are to "provide for needed water-dependent and water-related uses, provide opportunities for a variety of recreational and tourism activities." Also, to "accommodate additional uses such as

community support facilities, industrial uses, and uses that provide improved access to adjacent uplands in all ownerships.”

This leasehold also falls within the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan prepared by the Alaska Department of Fish and Game (ADF&G), Divisions of Habitat and Restoration, and Wildlife Conservation. Within the Critical Habitat Area, piers may be allowed for the purpose of the adjacent upland owners who require access to their property in a manner consistent with the critical habitat area statutes and regulations. NEBY owns the uplands adjacent to ADL 209326 and uses the piers to access their property from Kachemak Bay for commercial purposes.

Based on the classification and planning guidelines outlined above which support this authorization, DMLW has determined that the proposed lease is consistent with the classification, designation, and management intent of the Kenai Area Plan.

Traditional Use Findings:

The proposed site is located within the Kenai Peninsula Borough. Pursuant to AS 38.05.830 a traditional use finding is not required.

Access:

Access is via privately owned uplands property and Kachemak Bay.

Access Along Navigable and Public Waters:

Nearly all shore and tide lands in the State of Alaska are subject to an Along easement (AS 38.05.127 and 11 AAC 51.045). The purpose of this easement is to uphold the constitutional right of the public to have free access to, and use of, the State’s waterways.

Public Trust Doctrine:

Pursuant to AS 38.05.126, all authorizations for this site will be subject to the principles of the Public Trust Doctrine; specifically, the right of the public to use navigable waterways and the land beneath them for navigation, commerce, fishing, hunting, protection of areas for ecological studies, and other purposes. These rights must be protected.

Agency Review:

Agency review for ADL 209326 was conducted on October 30, 2020. The deadline for agency comments was November 19, 2020.

The following agencies were included in the review:

- Alaska Department of Commerce, Community, and Economic Development
- Department of Environmental Conservation
- ADF&G – Habitat

- ADF&G – Wildlife Conservation
- ADF&G – Advisory Committee
- Department of Transportation and Public Facilities
- DNR Division of Oil and Gas
- DNR Division of Oil and Gas, State Pipeline Coordinator’s Section
- DNR DMLW – Mining
- DNR DMLW – Water
- DNR Land Sales
- DNR Natural Resource Conservation and Development Board
- DNR Office of History and Archaeology
- DNR Division of Parks & Outdoor Recreation
- DNR Realty Services
- National Oceanic and Atmospheric Administration
- U.S. Army Corps of Engineers
- U.S. Coast Guard
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- City of Homer
- Kenai Peninsula Borough
- Homer Soil and Water Conservation District

SCRO received no new comments during this agency review, however, the ADF&G wanted to reiterate the comments they submitted during the agency review for the lease amendment. ADF&G issued NEBY a permit (Special Area Permit 19-V-0100-SA) to authorize construction within the Kachemak Bay Critical Habitat Area. The permit was issued on February 12, 2019 with an expiration date of December 31, 2024. The permit can be found as Attachment B of this decision.

SCRO Response:

As stipulated in the entry authorization and lease, NEBY is required to comply with all other associated authorizations needed for their project; this applies to the Special Area Permit issued by ADF&G. Additionally, SCRO recognizes that the permit issued by ADF&G has a sufficient term for NEBY to complete construction, survey, and appraisal of the dock expansion.

Lease Discussion:

On May 16, 1996, NEBY was granted a 20-year tidelands lease to construct and operate a pile dock and boat lift in support of their boat yard located on private uplands approximately four miles northeast of Homer, Alaska. On June 10, 1999, the lease was amended to a 30-year term, set to expire on June 11, 2024, to allow the lessee to apply for an Alaska Industrial Development and

Export Authority (AIDEA) loan, which requires a longer term than the lease was originally issued for. The 0.237-acre lease (Parcel A) is depicted as Lot 5 of Alaska Tidelands Survey 1234A.

On February 11, 2019, SCRO received a request to amend the current lease to increase the acreage to allow the extension of the existing pile dock as well as construction of a new pile dock on the lot to the north. The lease amendment would consist of the existing lease and additional 0.288 acres (Parcel B) depicted as Lot 4 of Alaska Tidelands Survey 1234A. The larger lease footprint will allow NEBY to expand the dock to allow larger vessels to be lifted using the existing boat lift. The expansion will include 25, 24-inch pilings driven into the tidelands.

After issuance of the FFD on August 1, 2020 for the lease amendment, it was determined that the current term of NEBY's lease would not be sufficient to secure the AIDEA loan needed for construction. On October 26, 2020, SCRO received a new lease application from NEBY for a term of 40 years.

DMLW is proposing to issue an EA to allow NEBY to construct, survey, and appraise the dock expansion and pier addition. Upon completion of survey and appraisal, DMLW will issue a new lease for a term of 40 years, serialized as ADL 209326 for the expanded leasehold.

The new lease will be subject to the terms of SCRO's standard lease document (available for review upon request) and any additional stipulations based, in part, upon the following considerations.

Development Plan:

The Development Plan (DP) attached to this decision as Attachment A and dated October 20, 2020 is under consideration by SCRO. Should the proposed lease amendment be granted, it is anticipated that the DP will need to be updated throughout the life of the lease as activities and/or infrastructure are added or subtracted. All updates must be approved, in writing, by SCRO before any construction, deconstruction, replacement of infrastructure, or change in activity will be authorized. SCRO reserves the right to require additional agency review and/or public notice for changes that are deemed by SCRO to be beyond the scope of this decision.

Hazardous Materials and Potential Contaminants:

No hazardous materials will be stored within the proposed leasehold. Stipulations will be included in the lease regarding the proper handling and storage of hazardous materials. The use and storage of all hazardous substances must be done in accordance with existing federal, state, and local laws. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed from the leasehold and disposed of in accordance with state and federal law.

Lease Performance Guaranty (bonding):

In accordance with AS 38.05.035 and AS 38.05.860, NEBY will be required to submit a performance guaranty for the lease site.

- **\$2,500.00 EA Cash Bond:** This bond will serve as a default penalty to be forfeited, all or in part, if the applicant fails to submit the survey, appraisal, or other documentation necessary for the issuance of the lease by the required due dates.
- **\$5,000.00 Performance Bond:** At the time of lease issuance, the \$2,500 EA cash bond will be applied to the currently held \$5,000.00 bond for a total Performance Bond of **\$7,500.00**. The \$7,500.00 bond will remain in place for the life of the lease. The bond amount is based upon the level of development, amounts of hazardous material and/or substances on site, and the perceived liability to the State. This bond will be used to ensure the applicant's compliance with the terms and conditions of the lease issued for their project. This bond amount will be subject to periodic adjustments and may be adjusted upon approval of any amendments, assignments, reappraisals, changes in the DP, changes in the activities conducted, or changes in the performance of operations conducted on the authorized premises, and as a result of any violations to one or more of the authorizations associated with this project.
- **Reclamation Bond:** SCRO is reserving the right to require a reclamation bond due to noncompliance issues during the term of the lease or near the end of the life of the project.

Insurance:

NEBY will be required to submit proof of liability insurance to SCRO with the State of Alaska listed as an additional "NAMED" insured party. NEBY will be responsible for maintaining such insurance throughout the term of the lease.

Survey:

In accordance with AS 38.04.045, NEBY must complete an Alaska Tidelands Survey according to the requirements and standards of the DMLW Survey Section prior to issuance of the lease. The draft survey must be submitted for review to the Survey Section within **one year** of issuance of the survey instructions. If the submitted survey is accepted by the Division, the measurements identified will be used to accurately calculate the total acreage. The survey must depict the lease boundaries.

Entry Authorization (EA):

SCRO is proposing to authorize NEBY entry onto State land through the issuance of an EA while they are completing the required construction, survey, and appraisal for the new lease. The proposed EA would be issued after the FFD goes into effect.

Per 11 AAC 58.410 the annual fee for the proposed EA is \$1,000. Should the appraisal indicate that the EA annual fee is less than estimated, those overages will be credited to the leasehold's account. Should the report indicate that the value of the land is greater than anticipated; the

shortfall must be remedied before the lease will be issued. Exceptions will be made if the estimate is substantially incorrect.

Compensation and Appraisal:

In accordance with AS 38.05.840, State-owned land may only be leased if it has been appraised within two years before lease issuance. SCRO has coordinated with DMLW's Appraisal Unit, and NEBY will be required to provide an appraisal of the lease site before the proposed lease will be issued. Once the appraisal has been approved by DMLW, the annual lease fee will be set at the fair market value of the proposed lease site. Furthermore, in accordance with AS 38.05.105, the proposed EA and lease will be subject to reappraisal at five-year intervals after the issuance of the proposed authorization.

Subleasing:

Subleasing may be permissible through AS 38.05.095, if the proposed lease amendment is approved. A sublease is defined as improvements not owned by the lessee that are located within the leasehold on the land or located on structures owned by the lessee. A sublease pertaining to the proposed lease includes, but is not limited to, user agreements, license agreements, communication site agreements, or any contracts between the lessee and other commercial entities. All potential subleases must first be approved in writing by SCRO. Depending on the activity of any potential subleases, SCRO is reserving the right to reevaluate the need for further agency review and/or public notice before making a determination on the appropriateness of the proposed sublease. Sublease compensation to the State will be determined by SCRO according to AS 38.05.073(m), under the authority of AS 38.05.075(a) Leasing Procedures. In any case, the sublease fee for commercial activities will not be less than 25% of the annual fee paid to leaseholder by the sublessee per 11 AAC 05.230(d)(6).

Assignment of Lease:

The lease, if issued, may be assigned to another individual or corporation only with written approval from DMLW. A lease will not be assigned to an entity if that entity does not meet the statutory requirements of the lease, or if the lessee is considered not to be in "good standing" with DMLW or any other agency authorization. DMLW reserves the right to amend the terms of the lease prior to assignment.

Reclamation:

In accordance with AS 38.05.090(b), all lessees must restore their lease site to a "good and marketable condition" within 120 days after termination of the lease. What level of reclamation constitutes as being "good and marketable" is at the discretion of SCRO.

Public Notice of the Preliminary Decision:

Pursuant to AS 38.05.945, this PD will be advertised for 30-day public comment period. Notice will be posted on the Alaska Online Public Notice System at

<http://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and the post office located in Homer. Courtesy notices will also be mailed or emailed to neighboring property owners, permit/lease holders, and other interested parties on January 20, 2021 for a 30-day public comment period.

Comment(s):

This decision is subject to both public and agency comments, and all written comments received by the comment deadline will be considered in the FFD. Only those who provide timely written comment, and the applicant have the right to appeal the FFD.

Written comments about this project must be received in this office no later than 5:00 PM on February 19, 2021 to be considered.

To submit comments, please choose one of the following methods:

Postal: Department of Natural Resources
Division of Mining, Land and Water
Southcentral Regional Land Office
ATTN: Todd Derks
550 West 7th Avenue, Suite 900C
Anchorage, AK 99501-3577
Email: todd.derks@alaska.gov
Fax: (907) 269-8913

Questions about the lease portion of this project can be directed to todd.derks@alaska.gov or (907) 269-8479.

If public comments result in significant changes to the Preliminary Decision, additional public notice will be given. To be eligible to appeal the Final Finding and Decision, a person must provide written comments during the Preliminary Decision comment period per AS 38.05.035(i)-(m).

Signature page follows

Recommendation:

DMLW has completed a review of the information provided by the applicant, examined the relevant land management documents, and has found that this project is consistent with all applicable statutes and regulations. SCRO considered three criteria to determine if this project provided the best interest to the State and the development and enjoyment of its natural resources. The criteria include both direct and indirect economic benefits to the State and encouragement of the development of the State's resources. The proposed lease provides a direct economic benefit to the State with the collection of fees for ADL 209326 and an indirect economic benefit by the services that NEBY will provide to the commercial and private boating industry of Alaska. Additionally, the issuance of this lease will authorize the use and development of state land for the construction of structures that support local commercial fisherman, charter companies, tenders, barges, and ferries. It is recommended that SCRO issue this lease under ADL 209326 to NEBY.



12/22/2020

Todd Derks, Natural Resource Specialist II

Date

Southcentral Regional Land Office, Division of Mining, Land and Water

Preliminary Decision:

It is the determination of the Division of Mining, Land and Water that it may be in the State's best interest to issue a new lease with a term of 40 years to NEBY, serialized as ADL 209326, as described above. SCRO will issue an EA for NEBY to complete construction of the additional pier and expanded dock. This PD shall now proceed to Public Notice.



1/19/2021

Samantha Carroll, Regional Manager

Date

Southcentral Regional Land Office, Division of Mining, Land and Water

Attachments

Attachment A – Development Plan

Attachment B – ADF&G Special Area Permit

Attachment A Development Plan

Kenneth Moore and Roseleen Moore
And
Northern Enterprises Boat Yard, Inc.

Developmental Plan ADL 209326

October 20, 2020

Kenneth Moore and Roseleen Moore and Northern Enterprises Boat Yard, Inc. propose to increase its existing lease of .237 acres of Lot #5 to include the state owned 0.2888 acres Lot #4 of tideland parcel on Kachemak Bay and the additional tideland to the south that we would encroach on for a dock expansion.

Homer is 200 miles South of Anchorage AK. The dock is located approximately 4 miles NE from Homer and 7 ½ miles NW from the Homer Harbor. This parcel is HM096003AK Tidelands Survey No. 1234, Lot 4 or Lot 4 Quad Map Section C-4, KPB parcel #17420120. The site is within Seward Meridian, T 6, R 13W, S 14 in the City of Homer. Its Latitude is 29.6646N, Longitude is 151.4397 W.

The tideland we are discussing is basic sand, mud and some coal. IT has a gradual shallow taper.

This site will serve to improve our existing dock by extending and adding a pier onto our existing dock which is located on HM 00960003AK Tidelands Survey No 1234 Lot 5 that we currently lease. The dock will continue to be used year-round and improvements will allow us a larger window for lifting and launching vessels as well as being able to lift larger, wider, and longer vessels than we are currently able to. The improvement to the dock would allow us to lift more vessels in the 50' to 70' range with drafts from 3' to 8 ½'. This would be beneficial for the commercial fisherman, charter companies, tenders, barges and ferries, as it would provide them a location that they could haul their vessel out and have repairs done while on land.

Kenneth Moore and Roseleen Moore own all adjacent parcels to the currently leased tideland Lot #5 and proposed inclusion of lease Lot #4. Access during construction will be by barge and our existing dock and an upland access private drive that is 20' from the mean-high-water line is on KPB parcel 17420119. The 50' easement is in place at this time. There is currently nothing on this lot the entire parcel and site below mean-high-water line is undisturbed and in its natural state. There will be no back fill or dredging on the site and no material from this site will be used in the building.

The site will be used for an extension of a new pier off our existing dock. There will be no structures, no fuel, no plumbing on this dock. Electricity is currently available on upland portion of our current dock. An emergency shed will be located on upland location near the docks. The shed contains fire extinguishers, a roll of absorb, absorbent pads, absorbent booms. A portable emergency unit will be also be available. Bio-waste pump outs can be handled when on upland ground by another company located in Homer.

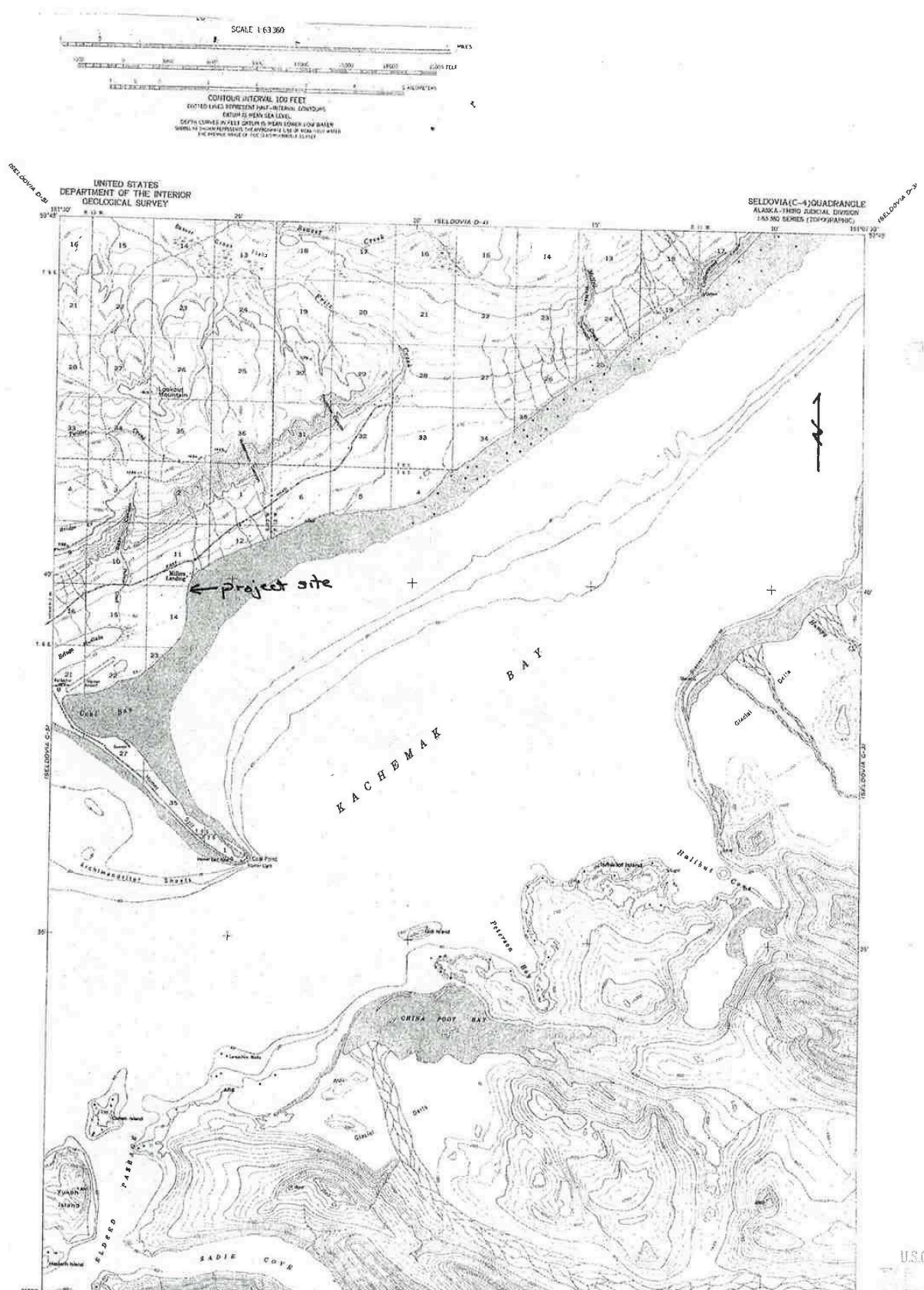
Pilings will be driven as displayed on exhibit A-1. There will be 23 -24" diam x 0.500" x 60' and 13 - 18" diam x 0.375" x 60' pilings. No dolphins will be installed, and no jetties will be constructed.

The expansion and addition of another pier will not alter any activities in the area.

A visual inspection will be performed of all pilings every 6 months. Once a year x-ray gauging will be performed on the pilings.

When the lease expires the docks will be removed from site and the area will be returned to a condition.

Attachment Development Plan



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NORTHERN ENTERPRISES BOAT YARD INC.
5140 KACHEMAK DR.
HOMER, AK 99603

LOT 2-A-1
NORTHERN ENTERPRISES NO. 1
PLAT #2002-67,
70.00'

LOT 3-A-1 PLAT #2002-67
KENNETH & ROSELEEN MOORE
ALASKA COMMUNITY PROPERTY TRUST
5140 KACHEMAK DR.
HOMER, AK 99603

LOT 3
0.303 acres

LOT 4
0.288 acres

LOT 5
0.237 acres

ATS 1234-A

PROPOSED DOCK

EXISTING DOCK EL=38.58

CITY LIMITS EAST

MHW
17.3'

15' ELEC. ESMT. CENTERED ON EXISTING MAINLINE

EAST 307.17'

SECTION 14 HTL

G.L.O. LOT 5 23.4

GREGORY A. FLEMING
P.O. BOX 616
BAGCLIFF, TX 77518

NORTHERN ENTERPRISES BOAT YARD INC.
DOCK ADDITION

APPLICANT: NORTHERN ENTERPRISES BOAT YARD INC.
FILE NO.: POA-2019-??
DOCK ADDITION EXHIBIT WITHIN LOTS 2-A-1 & 3-A-1, NORTHERN ENTERPRISES NO. 1 (HM2002-67), AND TIDELAND LOTS 4 & 5, ALASKA TIDELAND SURVEY NO. 1234A (HM1996-03), WITHIN THE SE1/4 OF SECTION 11, T6S, R13W, S.M., LAT: 59.440019° LONG: 151.664136° (WC8R4) WITHIN THE CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, HOMER RECORDING DISTRICT, STATE OF ALASKA

DOCK PLAN VIEW SHEET

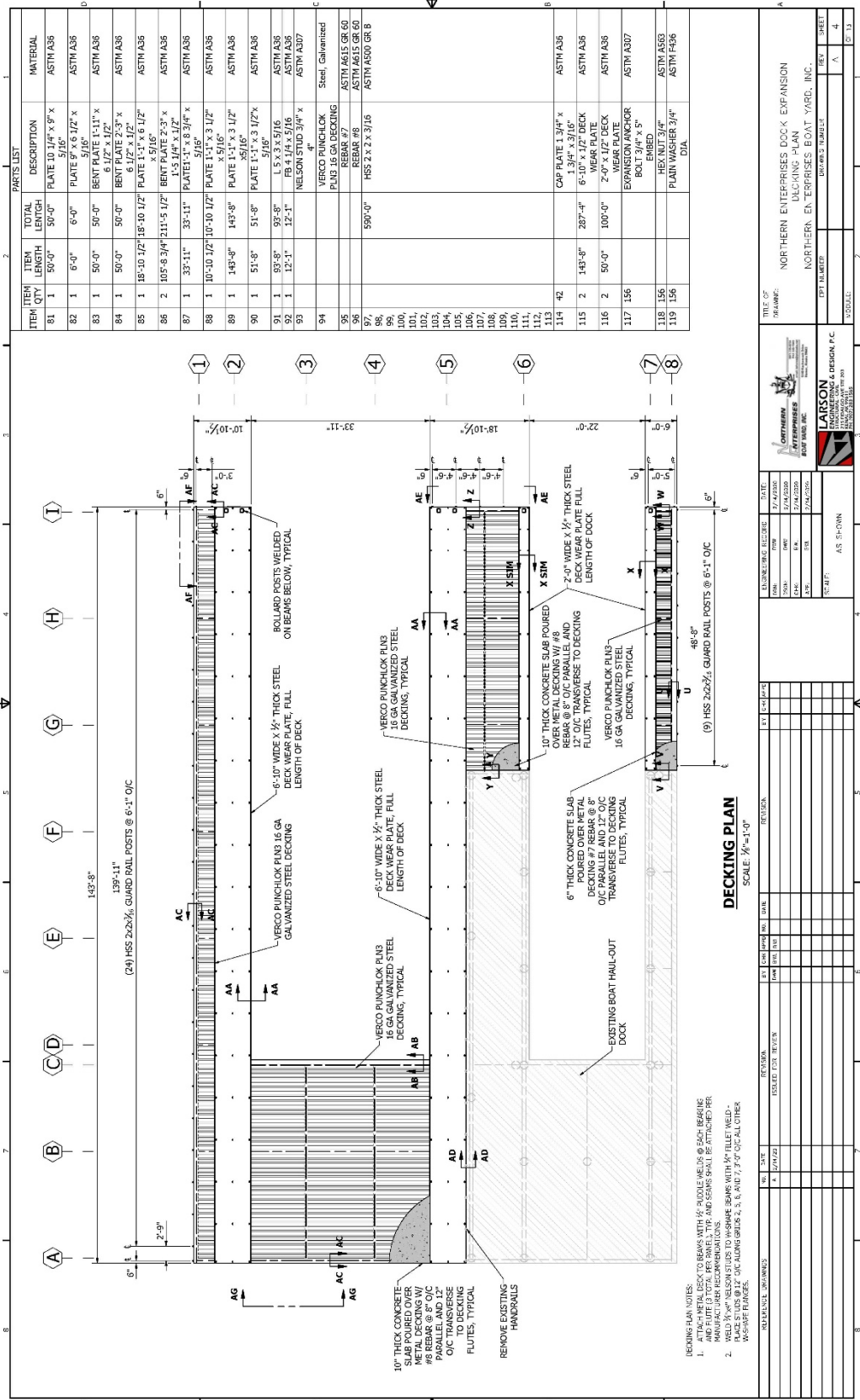
SHEET: C1.0
SCALE: 1"=50'
DATE: 1/24/2019

ITEM	ITEM QTY	ITEM LENGTH	TOTAL LENGTH	DESCRIPTION	MATERIAL
1, 2, 3, 4	18	3.75	67.5	ASTM A572 GR 50	ASTM A572 GR 50
5, 6, 7, 8	24	3.75	90.0	ASTM A572 GR 50	ASTM A572 GR 50
9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22	24	3.75	90.0	ASTM A572 GR 50	ASTM A572 GR 50
23, 24, 25	7	1.00	7.00	ASTM A572 GR 50	ASTM A572 GR 50
26	1	1.00	1.00	ASTM A572 GR 50	ASTM A572 GR 50
27	8	1.00	8.00	ASTM A572 GR 50	ASTM A572 GR 50
28	25	1.00	25.00	ASTM A572 GR 50	ASTM A572 GR 50
29	11	1.00	11.00	ASTM A572 GR 50	ASTM A572 GR 50
30	9	1.00	9.00	ASTM A572 GR 50	ASTM A572 GR 50
31	4	1.00	4.00	ASTM A572 GR 50	ASTM A572 GR 50
32	4	1.00	4.00	ASTM A572 GR 50	ASTM A572 GR 50
33	4	1.00	4.00	ASTM A572 GR 50	ASTM A572 GR 50

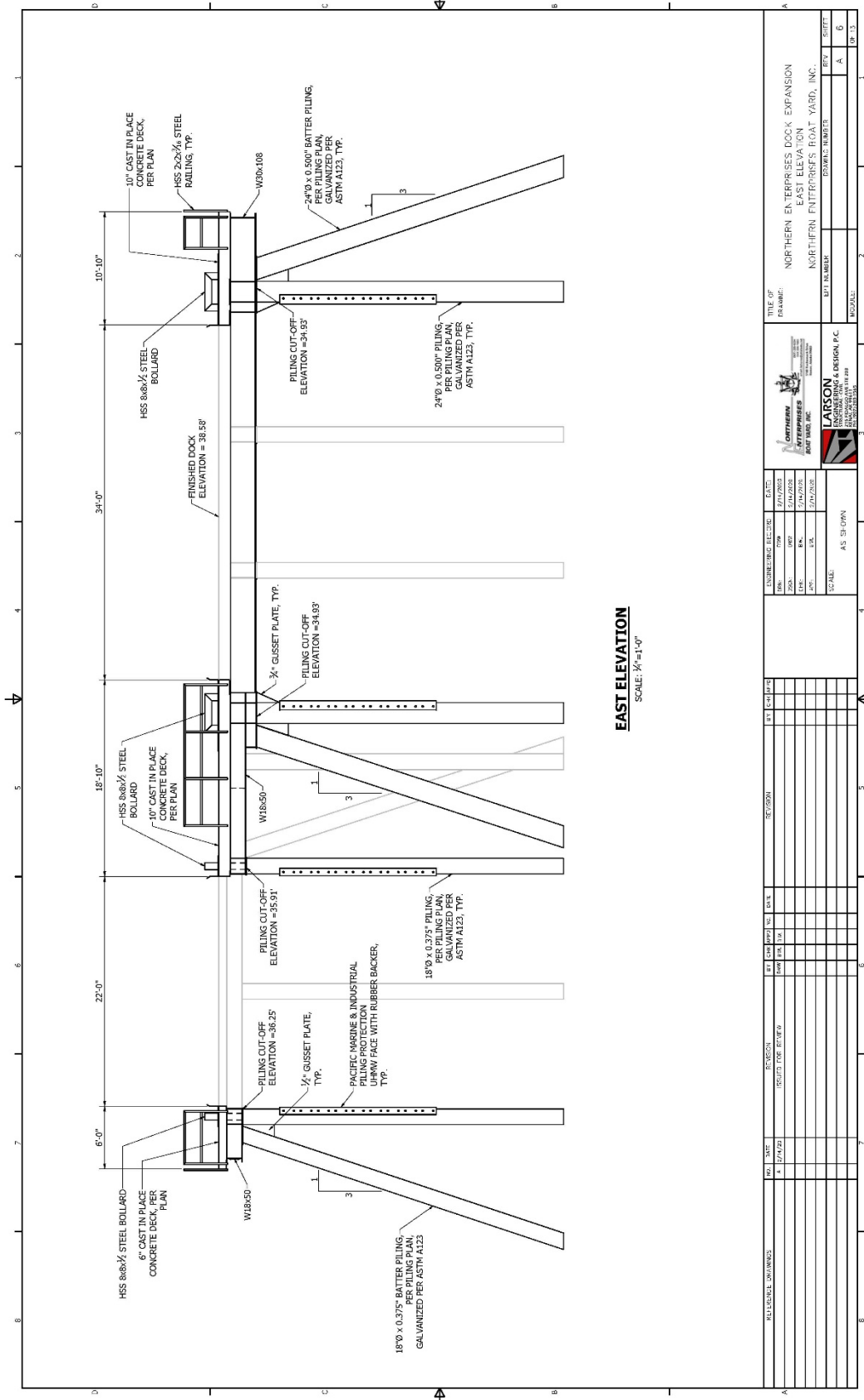
NOTES:

- ALL PILES TO BE CUT TO MATCH WITH PILING ALL
- ALLOWABLE CAPACITY IN BOTH TENSION AND COMPRESSION TO BE DETERMINED BY THE USER
- ALLOWABLE CAPACITY IN BOTH TENSION AND COMPRESSION TO BE DETERMINED BY THE USER
- ALLOWABLE CAPACITY IN BOTH TENSION AND COMPRESSION TO BE DETERMINED BY THE USER

Attachment Development Plan



Attachment Development Plan



Attachment B

ADF&G Special Area Permit



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Fish and Game

DIVISION OF HABITAT
Southcentral Area Office

514 Funny River Road
Soldotna, Alaska 99669-8255
Main: 907.714.2475
Fax: 907.260.5992

SPECIAL AREA PERMIT 19-V-0100-SA

ISSUED: February 12, 2019
EXPIRES: December 31, 2024

Northern Enterprises Boat Yard, Inc.
Carol Grace
5140 Kachemak Drive
Homer, AK 99603

RE: Piling-Supported Dock
Kachemak Bay Critical Habitat Area
Section 11, T 6S, R 13W, S.M.
Location: 59.6640° N, 151.4397° W
River Center Tracking No. 12367

Dear Ms. Grace:

Pursuant to 5 AAC 95, the Alaska Department of Fish and Game (ADF&G), Division of Habitat, has reviewed your proposal to expand an existing piling-supported dock at the referenced location within the boundaries of the Kachemak Bay Critical Habitat Area (KBCHA).

Project Description

The proposed dock construction will consist of three piers extending below mean high water (MHW), all of which will be approximately 105-feet in length. The northernmost pier will be approximately 8-feet wide, the middle pier will be approximately 15-feet wide, and the southernmost pier will be approximately 5-feet wide. Approximately twenty-three 24-inch diameter steel piles and seventeen 18-inch diameter steel piles will be installed to support the proposed dock expansion. The middle pier and southernmost pier will extend the length of the existing dock piers below MHW. Distance between piles will be approximately 15-feet so as not to restrict public access to adjacent tidelands. Pile driving will occur from adjacent uplands during de-watered conditions.

Attachment B

ADF&G Special Area Permit

Northern Enterprises Boat Yard, Inc.
19-V-0100-SA

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Issued: February 12, 2019
Expires: December 31, 2024

Legislatively Designated Special Area

The KBCHA was established by the Alaska legislature in 1974 through the enactment of AS 16.20.590 to “...*protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose*”. (AS 16.20.500). The Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (Management Plan) was adopted by the ADF&G in 1993. Activities that occur within the KBCHA must meet the goals and policies of the Management Plan, which have been adopted into regulation and are binding on department actions, including the issuance of Special Area Permits. The Management Plan provides that KBCHA be managed to maintain and enhance public use of fish, wildlife and critical habitat area lands and water.

In accordance with 5 AAC 95, project approval is hereby given subject to the project description, the following stipulations, and the permit terms:

1. All facilities and in-water structures shall be maintained in a manner that does not interfere with or restrict navigation or public access within the KBCHA.
2. The wooden portions of rafts or docks shall not be treated with any preservative containing pentachlorophenol or creosote. Pressure-treated lumber is preferred, however, after market, topical wood preservatives may be used provided they adhere to the above guidelines and are applied in an upland location and allowed to fully cure prior to placement in or over the KBCHA.
3. No vehicles or equipment leaking fuels, oils, hydraulic or cooling fluids shall be operated in the KBCHA.
4. No material of any kind, including waste products, pilings, supplies or equipment, shall be abandoned or disposed of within the KBCHA.

Permit Terms

This letter constitutes a permit issued under the authority of AS 16.20.530. Please be advised that this determination applies only to activities regulated by the Division of Habitat. This determination does not relieve you of your responsibility to secure other permits from state, federal, or local agencies. You are still required to comply with all other applicable laws.

You are responsible for the actions of contractors, agents, or other persons who perform work to accomplish the approved project. For any activity that significantly deviates from the approved plan, you shall notify the Division of Habitat and obtain written approval in the form of a permit amendment before beginning the activity. Any action that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of

Attachment B

ADF&G Special Area Permit

Northern Enterprises Boat Yard, Inc.
19-V-0100-SA

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Issued: February 12, 2019
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the Division of Habitat. Therefore, it is recommended you consult the Division of Habitat immediately when a deviation from the approved plan is being considered.

For the purpose of inspecting or monitoring compliance with any condition of this permit, you shall give an authorized representative of the state free and unobstructed access, at safe and reasonable times, to the project site. You shall furnish whatever assistance and information as the authorized representative reasonably requires for monitoring and inspection purposes.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The permittee shall mitigate any adverse effect upon fish or wildlife, their habitat, or any restriction or interference with public use that the commissioner determines may be expected to result from, or which actually results from, the permittee's activity, or which was a direct result of the permittee's failure to: 1) comply with a permit condition or a provision of 5 AAC 95; or 2) correct a condition or change a method foreseeably detrimental to fish and wildlife, or their habitat.

You shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or your performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

Pursuant to 5 AAC 95.920, an interested person may initiate an appeal of a decision made under this chapter in accordance with the provisions of AS 44.62.330 - 44.62.630 by requesting a hearing under AS 44.62.370.

Please direct questions about this permit to Habitat Biologist Lucas Byker at (907) 714-2478 or e-mail at lucas.byker@alaska.gov.

Sincerely,

Doug Vincent-Lang
Commissioner

Brian Blossom

By: Brian Blossom
Kenai Peninsula Area Manager
ADF&G, Division of Habitat

cc: KRC File

By email only: