

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND & WATER, SOUTHEAST REGION
400 Willoughby Ave., P.O. Box 111020
Juneau, Alaska 99811-1020**

SPECIAL LAND USE PERMIT

LAS 29655

This Agreement is made and entered into this ____ day of May, 2014 by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Mining, Land and Water, hereinafter referred to as Permittor and Richard F. Dangel and Consorcia C. Dangel, owner of parcel 1, hereinafter referred to as Permittee to achieve resolution of the Permittee's unauthorized use and occupancy of state land.

This Special Land Use Permit affects the two parcels described as follows:

Parcel 1 - Lot 3, Cannon Island Resubdivision, according to the official plat thereof, filed under Plat No. 2006-4, records of the Sitka Recording District, First Judicial District, State of Alaska.

Parcel 2 - A parcel of state-owned tide and submerged land within Section 6, Township 56 South, Range 64 East, Copper River Meridian containing 0.06 acres (2727 square feet) more or less. This parcel is located in Sitka Sound immediately adjacent to and seaward of Lot 3, Cannon Island Resubdivision, according to the official plat thereof, filed under Plat No. 2006-4, records of the Sitka Recording District, First Judicial District, State of Alaska.

This special land use permit is issued for the express purpose of authorizing, after-the-fact:

- Continued maintenance of filled tide and submerged land associated with residential use of the Permittee's adjacent upland property. The diagram attached to this permit, labeled ATTACHMENT A, accurately depicts the area seaward of the mean high water (MHW) line of record where fill has been placed. The seaward boundary between state-owned land and the upland parcel is fixed at the MHW line of record prior to placement of the fill.

WHEREAS, it is understood and agreed by Permittee that, as a condition of the granting of the land use authorization applied for, the land covered by this special land use permit shall be used for no purpose other than maintenance of the existing fill and improvements within the permitted area.

This permit conveys no interest in state land. No preference right for a lease, purchase or long-term use of the land is granted or implied by the issuance of this special land use permit.

In the event that the land use authorization herein granted shall in any manner conflict with or overlap a previously granted right-of-way or easement, Permittee shall use this permitted area in such a manner as to not interfere with the peaceful use and enjoyment of the previously issued right-of-way or easement.

Permittee in the exercise of the rights and privileges granted by this land use authorization shall comply with all regulations now in effect or as hereafter established by the Division of Mining, Land and Water and all other federal, State or municipal laws, regulations or ordinances applicable to the area herein granted.

CONDITIONS

1. TERM: This Special Land Use Permit is issued for a period of **25 years** and may be terminated if the State has a higher and better use for the land. The cost of relocating any improvements shall be borne by Permittee. This Special Land Use Permit shall expire on **May 30, 2039**.

2. PERMIT RENEWAL: An application/request for permit renewal must be submitted on or before permit expiration but no sooner than 90 days prior to the end of the authorized term.

If there have been and will be no changes to the approved development/operations plan, a statement certifying there have been and will be no changes, an application filing fee and a comprehensive set of photographs accurately depicting the site in its current condition (including existing improvements) will be accepted as a complete application.

If there have been and/or will be changes in the development/operations plan, a new permit application package, application filing fee and photographs of improvements occupying the site will be required

3. ASSIGNMENT: This land use authorization may be transferred or assigned only with prior written approval from the Permitter. Any lands included in this permitted area or affected by this permit which are sold under a contract to purchase shall be subject to the terms and conditions of this Special Land Use Permit. Upon issuance of title to the purchaser, this Special Land Use Permit shall remain in effect until its date of expiration.

4. ANNUAL USE FEE: The annual use fee for this Special Land Use Permit is based on fair market rental land value and is initially established at **\$230.00** per year. The annual use fee is due on or before **June 1st** each year. This fee is subject to adjustment by Permitter at the commencement of the sixth year of the term and every fifth year thereafter (the "adjustment date"). The adjustment shall be based on current fair market rental land value. The compensation adjustment takes effect on the applicable adjustment date, regardless of whether the adjustment determination occurs before or after that date.

5. PENALTY CHARGES: Permittee shall pay a fee for any late payment or returned check issued by Permittee as follows:

(a) Late Payment Penalty: The greater of either the fee specified in 11 AAC 04.010 or interest at the rate set by AS 45.45.010(a) will be assessed on a past-due account

until payment is received by the State.

- (b) Returned Check Penalty: A returned check fee as provided in 11 AAC 04.010 will be assessed for any check on which the bank refuses payment.

- 6. USE OF PERMITTED AREA: The development of the permitted area shall be limited in form and scope to the area and improvements specified in the development, included as Attachment A. The permitted area must be utilized solely for the purpose described in the approved development plan. Use of the area for purposes other than those specified in this agreement is a violation of this land use authorization.

Permittee shall utilize the lands herein granted consistent with the purposes of the authorized use, shall maintain the premises in a neat and orderly manner, and shall adopt and apply such safety measures as are necessary, proper and prudent with respect to the use to which the land is subjected. No additional improvements shall be constructed by Permittee upon the permitted area. No expansion of the existing fill within the permitted area is allowed. Enlarging the fill area beyond the existing footprint and total square footage is prohibited and will be grounds for termination.

Any proposed revisions to the development and operations plan must be approved in writing by Permitter before the change in use or development occurs. In the event existing structures and improvements are rendered unusable to the extent removal is required, Permittee will not replace the existing structures and improvements. Any repair work for bank stabilization that may be necessary in the future must be designed to minimize impacts and reduce and not exceed the extent of fill within the permitted area.

- 7. COMPATIBLE CONCURRENT USE: This Special Land Use Permit is private and non-exclusive. Permitter reserves the right to allow other like or compatible uses of the permitted area and the right to require such users to enter into an equitable maintenance agreement with the holder of this Special Land Use Permit. The equitableness of any such agreement shall be determined by Permitter.
- 8. PUBLIC ACCESS: Public access shall not be precluded by activities or structures allowed by the permitted area. All use of the permitted area must be conducted in a manner that will ensure minimum conflict with other users of the area. Permittee shall not close areas or trails or otherwise prevent overland access commonly used by the public. The interests served by 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 the areas for ecological study, and other purposes will be protected.
- 9. INDEMNIFICATION: Permittee assumes all responsibility, risk and liability for all activities of Permittee, its employees, agents, invitees, contractors, subcontractors, or licensees directly or indirectly conducted in connection with this land use authorization, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this land use authorization. Permittee shall defend, indemnify, and hold harmless the State of Alaska, its employees, and agents from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Permittee, its employees, agents, invitees, contractors, subcontractors, or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the State or anyone acting on the State's behalf.

Within 15 days Permittee shall accept any such cause or action or proceeding upon tender by the State. This indemnification shall survive the termination of the land use authorization.

10. OTHER AUTHORIZATIONS: This authorization does not relieve the Permittee from securing any other permits, licenses, or other authorizations required by federal, state, or local law. Permittee shall, at its expense, comply with all applicable laws, regulations, rules and orders, and with the requirements and stipulations included in this land use authorization. Permittee shall ensure compliance by its employees, agents, contractors, subcontractors, licensees, or invitees.
11. FUEL AND HAZARDOUS MATERIAL/SUBSTANCES: No fuel or hazardous substances are to be stored on the subject parcel. The use and storage of hazardous material/substances other than the types of fuel stated above is prohibited. Hazardous Material/Substance is defined as any item or agent (biological, chemical, physical, solid, liquid or gas) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.
12. INSPECTIONS: Authorized representatives of the State of Alaska shall have reasonable access to the subject parcel for purposes of inspection. Permittee may be charged fees under 11 AAC 05.010(a)(7)(M) for routine inspections of the subject parcel, inspections concerning non-compliance, and a final close-out.
13. TERMINATION OF PERMIT: In the event the necessity for the Special Land Use Permit no longer exists, or Permittee abandons the permitted area, this land use authorization shall terminate.

Prior to relinquishment, or within 90 days following termination, revocation or cancellation of this authorization by the Permitter, Permittee shall remove all structures and improvements from the area herein granted and shall restore the area to the same or similar condition as it was prior to placement of the fill. Should Permittee fail or refuse to remove the structures or improvements or renew this authorization within the time allotted, Permitter may order restoration of the area at the Permittee's expense.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to Permittee from the cancellation, forfeiture, or termination of this land use authorization prior to the expiration of the full term for which it was issued.

NOW THEREFORE, in accordance with the provisions of AS 38.05.850 and the rules and regulations promulgated thereunder, and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, Permittee is hereby authorized granted said land use authorization for continued use of the lands herein described.

IN WITNESS WHEREOF, Permitter has caused these presents to be signed in duplicate and Permittee has hereunto affixed his signature on the day and year written.

PERMITTEE:

By: _____
RICHARD F. DANGEL

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

This is to certify that on the _____ day of _____, _____, before me the undersigned Notary Public in and for the State of Alaska, personally appeared Richard F. Dangel, known to me to be the person named and who signed the foregoing special land use permit and acknowledged doing so voluntarily and for the uses and purposes stated therein.

Notary Public for the State of Alaska
My Commission expires _____

PERMITTEE:

By: _____
CONSORCIA C. DANGEL

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

This is to certify that on the _____ day of _____, 2014, before me the undersigned Notary Public in and for the State of Alaska, personally appeared Consorcia C. Dangel, known to me to be the person named and who signed the foregoing special land use permit and acknowledged doing so voluntarily and for the uses and purposes stated therein.

Notary Public for the State of _____
My Commission expires _____

