



PLANNING COMMISSION STAFF REPORT

REZONE: AME2022 0006

HEARING DATE: JANUARY 24, 2023

(907) 586-0715

CDD_Admin@juneau.org

www.juneau.org/community-development

155 S. Seward Street • Juneau, AK 99801

DATE: January 11, 2023
TO: Michael LeVine, Chair, Planning Commission
BY: Irene Gallion, Senior Planner *Irene Gallion*
THROUGH: Jill Maclean, Director, AICP

PROPOSAL: Applicant requests rezone for approximately 3.7 acres in the Aak’w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

STAFF RECOMMENDATION: Staff recommends the Planning Commission extend the rezone west to Capital Avenue, then forward a recommendation of APPROVAL to the Assembly.

KEY CONSIDERATIONS FOR REVIEW:

- Staff recommends extending the boundaries west to Capital Avenue, for cohesive block development.
- Proposed MU zoning is consistent with Native Restricted Deeded land, which has no dimensional standards.
- Proposed MU zoning facilitates Willoughby District Land Use Plan Chapter 5:
 - Zero setbacks for construction to the lot line.
 - Current height limit 45 feet. Proposed zoning would allow construction to the planned height of 55 or 65 feet, depending on area.
- Zero setbacks facilitates canopy construction, improving pedestrian experience.

ALTERNATIVE ACTIONS:

1. **Amend:** recommend an amended rezone boundary; recommend an alternative zoning district; or recommend conditions.
2. **Deny:** recommend denial of the requested rezone. Planning Commission must make its own findings.
3. **Continue:** continue the hearing to a later date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

ASSEMBLY ACTION REQUIRED:

Assembly action is required for this rezone.

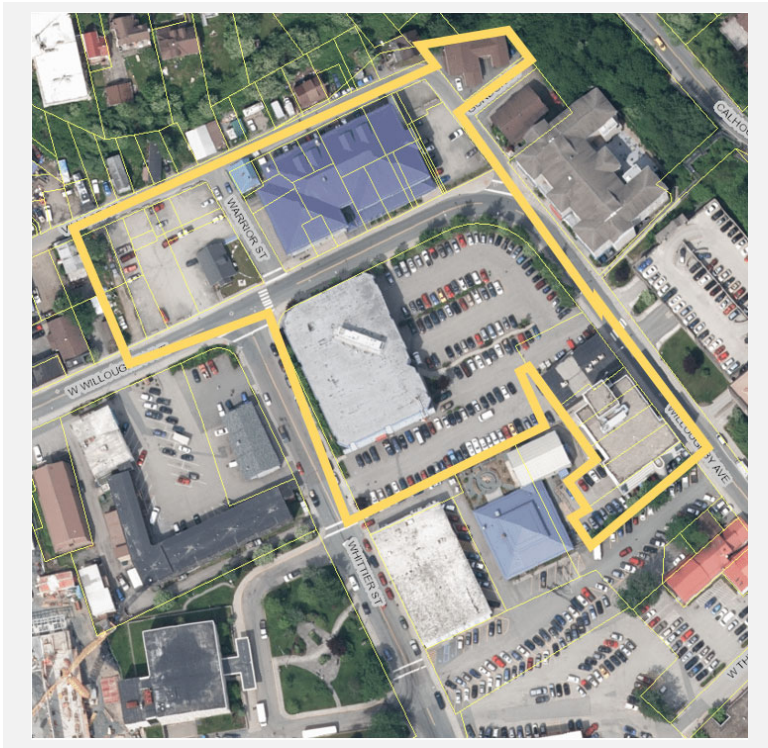
STANDARD OF REVIEW:

- Quasi-legislative decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
 - CBJ 49.25.500
 - CBJ 49.75.110
 - CBJ 49.75.120
 - CBJ 49.75.130
 - CBJ 49.10.170(d)
 - CBJ 49.80

GENERAL INFORMATION	
Property Owner	Attachment B, C
Applicant	Central Council Tlingit & Haida
Property Address	Attachment B, C
Legal Description	Attachment B, C
Parcel Number	Attachment B, C
Zoning	MU2
Land Use Designation	Traditional Town Center, w/ Capital Complex
Lot Size	Attachment B, C
Water/Sewer	CBJ
Access	Willoughby Avenue
Existing Land Use	Urban Developed
Associated Applications	AME2022 0008

The Commission shall hear and decide the case per CBJ 49.75.120 - Restrictions on rezoning. *Rezoning requests covering less than two acres shall not be considered unless the rezoning constitutes an expansion of an existing zone. Rezoning requests which are substantially the same as a rezoning request rejected within the previous 12 months shall not be considered. A rezoning shall only be approved upon a finding that the proposed zoning district and the uses allowed therein are in substantial conformance with the land use maps of the comprehensive plan.*

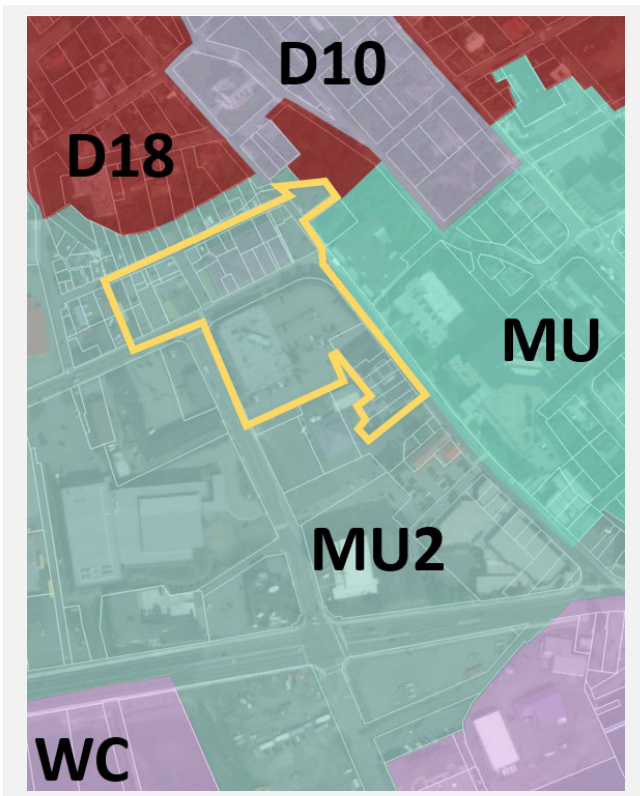
SITE FEATURES AND ZONING



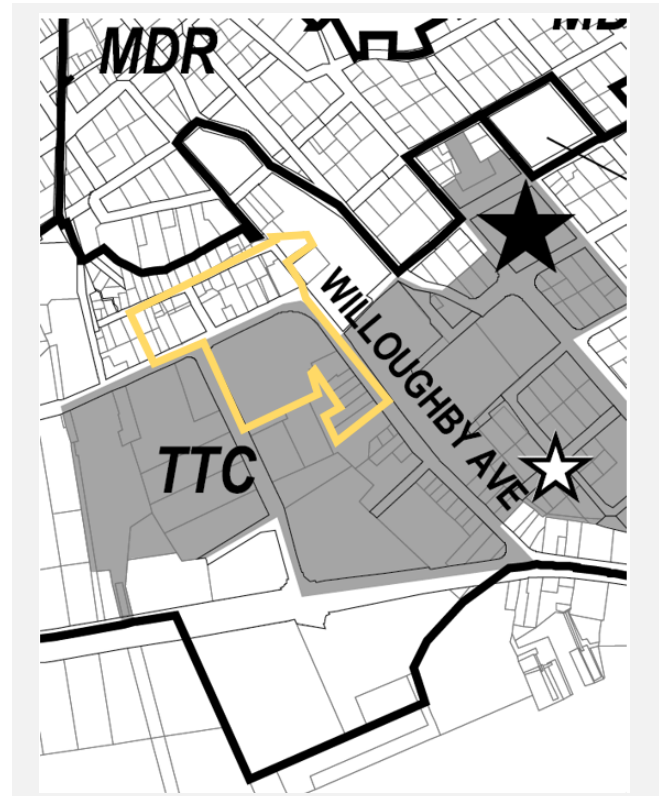
SURROUNDING ZONING AND LAND USES	
North (D18)	Residential
South (MU2)	Mixed Use
East (MU)	Mixed Use
West (MU2)	Mixed Use

SITE FEATURES	
Anadromous	No
Flood Zone	No
Hazard	None mapped
Hillside	No
Wetlands	No
Parking District	Town Center
Historic District	No
Overlay Districts	None

CURRENT ZONING MAP



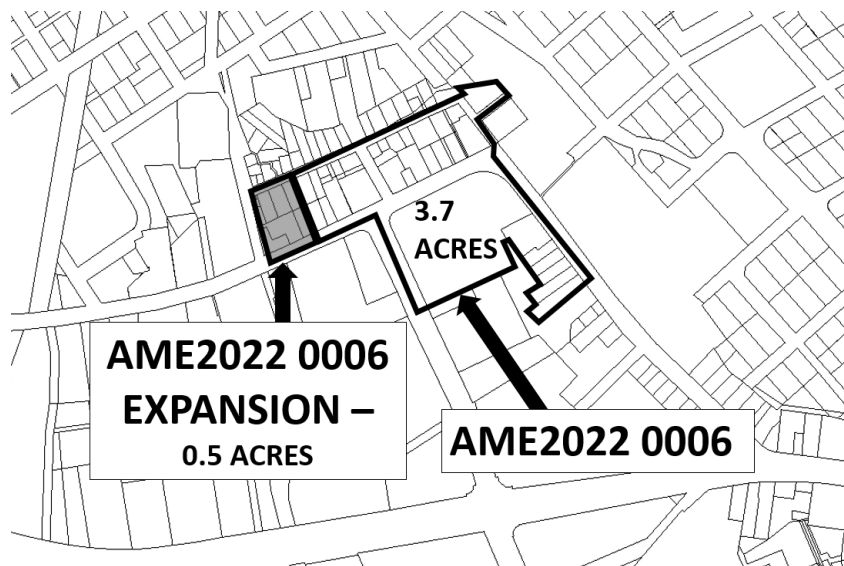
LAND USE DESIGNATION MAP



BACKGROUND INFORMATION

Project Description – The Central Council of Tlingit and Haida Tribes of Alaska (CCTHITA) has requested a rezone of properties they either control or influence (**Attachment A, B**) from MU2 to MU.

The Community Development Department asks the Commission to extend the boundary to Capital Avenue (**Attachment C**).



A proposed ordinance map is provided in **Attachment D**.

Background – Village Street follows what used to be the coastline. From 1930 to 1960 waste rock from the Alaska Juneau Gold Mine filled the tidelands, creating the Aak’w Kwan District (formerly the Willoughby District). Urban renewal in the 1960s displaced long-time residents from their residences, resulting in the wide-scale transfer of land to wealthier land owners. Replacement housing never materialized, leaving the Indian Village one of the last downtown sites for local Natives.

Zoning History – The below table summarizes zoning history for the lot.

Year	Zoning	Summary
1956	C-1	Commercial and Light Industry Districts. Height limit: 50 feet No minimum lot area Minimum yard, front: 10 feet Minimum yard, side: 10 feet Minimum yard, rear: As necessary to meet parking requirements
1969	RML	Low Density Multi-Family Residential District Minimum lot size: 5,400 square feet Minimum lot width: 60 feet Minimum lot depth: 90 feet Maximum building height: 35 feet Maximum lot coverage: 50% Minimum front yard setback: 15 feet Minimum rear yard setback: 15 feet Minimum side yard setback: 5 feet for one story, 6 feet for two stories, 8 feet for three stories. Required parking based on use
1987	C2	Central Business District Minimum lot size: 2,400 square feet Minimum yard setbacks: 10 feet if adjoining residential district Maximum lot coverage: None. Minimum lot width: 20 feet Required parking based on use
1998	MU2	GC, LC and D18 to MU2, Ordinance 98-10 Minimum lot size: 4,000 square feet Minimum lot width: 50 feet Maximum coverage: 80% Maximum height, permissible uses: 45 feet Accessory uses, 35 feet All setbacks: 5 feet Required parking based on use

ZONING ANALYSIS

CBJ 29.25.200 Zoning Districts Defined -

Current Zoning – MU2	Proposed Zoning – MU
<i>The MU2, mixed use 2 district, is intended to place a greater emphasis on residential development than is the case in the MU district. A range of residential development types is allowed. Multi-family residential uses are allowed at a density of up to 80 units per acre.</i>	The MU, mixed use district, reflects the existing downtown development pattern and is intended to maintain the stability of the downtown area. Multi-family residential uses are allowed and encouraged.

CBJ 49.25.300 Table of Permissible Uses Comparison – Two uses in the Table of Permissible Uses differ between MU and MU2:

No.	Use Description	Current Zoning	Proposed Zoning
4.220	Marijuana product manufacturing facility	Not Allowed	CUP
12.300	Zoos, aquaria, or wild animal rehabilitation facilities with a visitor component	CUP	Not Allowed

No known zoos, aquaria or wild animal rehabilitation facilities will be made nonconforming with this proposed rezone.

CBJ 49.25.400 Dimensional Standards –

Standard		Current Zoning	Proposed Zoning
Lot	Size	4,000	3,000
	Width	50	50
Setbacks	Front	5	0
	Rear	5	0
	Side	5	0
	Street Side	5	0
Lot Coverage		80%	No limit
Height	Permissible	45	No limit
	Accessory	35	No limit

The proposed MU zoning has a smaller lot sizes than the existing MU2 zoning. Under the Applicant’s proposed rezone, three lots would become conforming, two of which are under one parcel code (See **Attachment B**). Under CBJ’s proposed extension, the rezone does not impact conformity (See **Attachment C**).

CBJ 49.25.500 Density – Proposed MU zoning has no maximum density. No property will become nonconforming for density under this proposed rezone.

Native Restricted Deeds - Six impacted lots are under Native Restricted Deeds, a special land status (**Attachment E**). CBJ has no lawful oversight of the lots. By agreement with the Tribes, CBJ will respond to public health and safety issues.

CBJ does not issue building permits, nor regulate setbacks, structure location or height for Native Restricted Deed lots. Proposed MU zoning has zero setback, no height limit, and no structure footprint restrictions. MU zoning would facilitate development patterns similar to those of neighboring Native Restricted Deed lots.

Potential for Subdivision – Minimum lot size is 4,000 under current MU2 zoning, and 3,000 under proposed MU zoning.

The estimate of lots that could result from subdivision assumes consolidation of larger parcels of multiple lots, then subdivision into lots of conforming size. The sub-dividable lots could provide 39 lots under proposed MU zoning, as opposed to 28 lots under current MU2 zoning (**Attachment F**).

The lots proposed in CBJ’s extension cannot be subdivided under either zoning scenario.

TRAFFIC AND TRANSPORTATION

Access	Roadway Classification	Average Annual Daily Traffic
Willoughby Avenue	Collector	1,280 ^A
Whittier Street	Collector	2,752 ^A
Village Street	Local	Unknown
Warrior Street	Local	Unknown
Capital Avenue	Local	491 ^B

A: Alaska Department of Transportation and Public Facilities, 2021 data

B: CSP2020 0001 Capital Avenue Reconstruction, engineer’s traffic counts

Traffic impacts are estimated based on use. Traffic estimates below are for two uses that differ between existing MU2 and proposed MU zoning (*Institute of Traffic Engineers Trip Generation Manual, 9th Edition, Volume 2 and 3*).

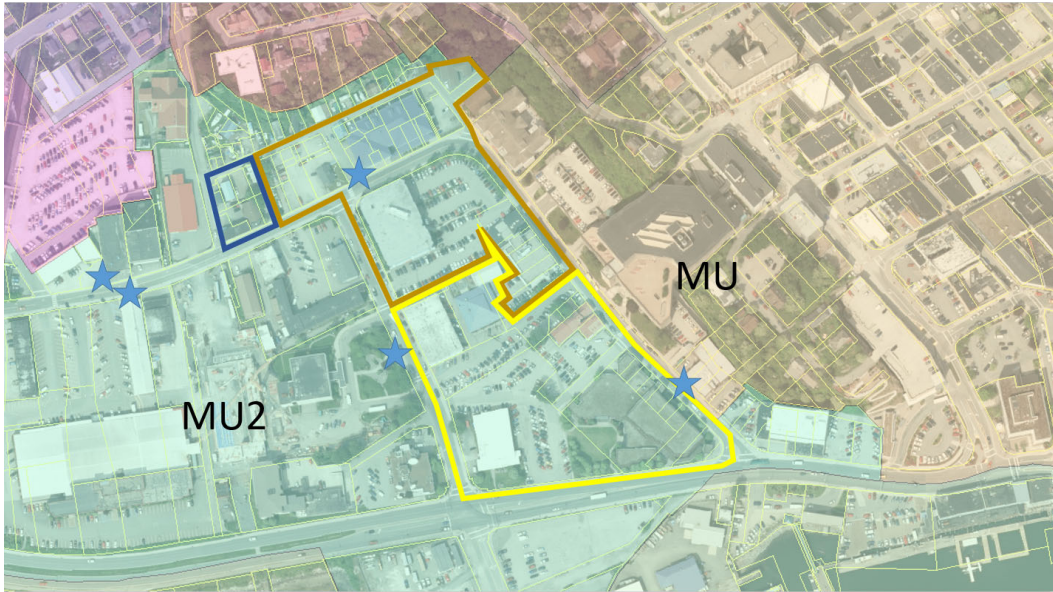
Manufacturing: 3.82 Average Annual Daily Traffic (AADT) per 1,000 square feet (page 173). *Manufacturing does not require a storefront. Other areas of Juneau provide less expensive property.*

Zoos: 114.88 AADT per acre (page 900). *Note that an oceanarium has been proposed along Juneau’s waterfront, outside of the proposed rezone.*

Non-motorized transportation – The area proposed for rezone is urban. The rezone would allow structures to be built up to the property line, which would facilitate construction of canopies over the sidewalk.

Village Street and Warrior Street do not have sidewalks.

Proximity to Public Transportation – Capital Transit has an outbound stop at the southwest corner of the Andrew Hope Building, within the proposed rezone. The closest inbound stop is in the 600 block of Willoughby Avenue. The blue stars in the image below represent Capital Transit stops.



COMMUNITY SERVICES

The table below summarizes community services that may be affected by the proposed rezone.

Service	Summary
Water/Sewer	CBJ
Fire Service	Downtown Fire Station
Schools	Schools that serve the proposed rezone area: Harborview Elementary School, Montessori Borealis, Yaakoosge Daakahidi Alternative High School, Juneau Douglas High School,
Recreation	Andrew Hope Building/Elizabeth Peratrovich Hall, Alaska Native Veterans Memorial, Gaajaa Hít

ENVIRONMENTAL, CONSERVATION, HISTORIC, AND ARCHEOLOGICAL RESOURCES

The table below summarizes Conservation, Historic, and Archeological Resources which may be affected by the proposed rezone.

Resource	Summary
Conservation	None
Wetlands	None
Anadromous	None
Historic	Alaska Native Veterans Memorial, Gaajaa Hít
Archeological	None Known

The Andrew Hope Building houses the offices of CCTHITA. This organization preserves native culture and actualizes participation in the community. CCTHITA has origins in Alaska’s statehood and the Alaska National Interest Lands Conservation Act of 1980.



ABOVE: The Alaska Native Veterans Memorial to the southwest of the Andrew Hope Building. The engraving says, in part, "This memorial is dedicated to all Alaska Native Veterans Southwest who served in the United States Armed Forces. Let us not dwell on their passing, but remember their shining spirits that will live on forever."



Left: Gaajaa Hít was constructed in 1971 as a community center for the Village. The 1977 totem poles honor the Eagle and Raven clans of the Auk Tribe. The screen was designed and painted in 1977. Tlingit elder Cecilia Kunz named Gaajaa Hít by in 2000.

CONFORMITY WITH ADOPTED PLANS

2013 COMPREHENSIVE PLAN VISION: *The City and Borough of Juneau is a vibrant State Capital that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.*

2013 COMPREHENSIVE PLAN -			
Chapter	Page No.	Item	Summary
10	132	10.4-IA1	Design higher density housing in scale with adjacent lower-density housing.
	140	10.13-SOP1	Allow high density mixed use developments.
		10.13-IA1	Rezone appropriate land for mixed use.
		10.13-IA4	Plan for redevelopment into pedestrian-oriented mixed use.
11	184	Subarea 6	3. Enhance the Capitol Complex
	185	Subarea 6	6. Preserve viewsheds downtown (through Willoughby Land Use Plan)
			10. Promote mixed uses downtown.

The Comprehensive Plan maps the area as Traditional Town Center and Capitol Complex.

Traditional Town Center (TTC): *These lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers, the University, major employment centers and public transit corridors, as well as other areas suitable for a mixture of retail, office, general commercial, and high density residential uses at densities at 18 or more residential units per acre. Residential and non-residential uses could be combined within a single structure, including off-street parking. Ground floor retail space facing roads with parking behind the retail and housing above would be an appropriate and efficient use of the land.*

MU2 (existing) and MU (proposed) zoning conform to this land use.

Capitol Complex: *An area in downtown Juneau which could contain legislative hearing rooms, offices, meeting rooms, pedestrian-friendly circulation systems, parking, transit services, seasonal and short-term accommodations, food and beverage services, cultural and entertainment activities, and other facilities which support the legislative activities of the state capital in Juneau. This area is shown on the land use maps for Subarea 6, particularly Map M, and is centered on Telephone Hill, the proposed site of a new State Capitol building.*

MU zoning (proposed) would improve conformity by allowing structure construction up to the front property line, facilitating construction of canopies over the sidewalk.

2016 HOUSING ACTION PLAN			
Chapter	Page No.	Item	Summary
	49	9. Downtown Strategy	Build on planning efforts in the Willoughby District
	51		Consider inclusionary zoning so new business can meet housing needs.

MU2 (existing) and MU zoning (proposed) both facilitate the Housing Action Plan. MU allows higher residential density.

2011 Willoughby District Land Use Plan, Chapter 5*			
Chapter	Page No.	Item	Summary
5	35	5.1 Planning and Design Principles	Build structures at the lot line to facilitate “human scale” development. Proposed MU zoning has a zero foot required setback.
5	39	Figure 5. Building Height	The plan recommends a 50 foot height limit in the rezone area to protect viewsheds from Calhoun and Dixon. MU2 (existing zoning) height limit is 45 feet. MU has unlimited height limit, allowing construction to the full 50 feet.
5	41	5.2 Development Themes	Triple residential units by 2021. Existing MU2 zoning has a density limit of 80 units per acre. Proposed MU has no density limit.
5	45	Land Use and Development	Aspirational goals for redevelopment, ground floor office space, increased density, more eyes on the street, and consolidated government offices.

**Only Chapter 5 of the Willoughby District Land Use Plan was adopted into the Comprehensive Plan.*

Like the Housing Action Plan, the Willoughby District Land Use Plan encourages residential density. Proposed MU zoning allows structures to be built to the front property line, an element of the Willoughby District Land Use Plan creating “human scale” development.

The Willoughby District Land Use Plan proposes height limits (see page 18 of **Attachment H**). The Willoughby District Land Use Plan Chapter 5 is incorporated by reference into the 2013 Comprehensive Plan. Citation in the Comprehensive Plan does not create a right to a certain development [CBJ 49.05.200(c)]. When a conditional use permit is proposed in the Aak’w Kwan district, the Planning Commission will be asked to review the proposal for conformity with the Comprehensive Plan [CBJ 49.15.330(f)(3)]. The Commission may use the context of a land use plan to establish conformity. For instance, the height limitation in the Willoughby District Land Use Plan protects the view from Calhoun Avenue and Dixon Avenue. If a mitigating measure was proposed that met this goal, the Commission could approve a height taller than that proposed in the land use plan, if height conformed to zoning limitations. MU has no height limit.

AGENCY REVIEW

CDD conducted an agency review comment period between December 20, 2022 and December 27, 2022 (**Attachment G**). No comments were received.

State of Alaska was e mailed on August 4, 2022. No comments were received. A subsequent request was made on December 21, 2022. No comments were received in time for analysis in this staff report.

Tlingit Haida Regional Housing Authority missed the public meeting, but were emailed materials. Staff offered to do a presentation or answer any questions they had.

PUBLIC COMMENTS

CDD conducted a public meeting on December 6, 2022 (**Attachment H**). One member of the public attended. The attendee's concern was to protect the view from his residence on Dixon Street. The attendee was comfortable with the limitations of the Willoughby District Land Use Plan.

CDD conducted a public comment period between December 12, 2022 and January 12, 2023 (**Attachment I**). Public notice was mailed to property owners within 500 feet of the proposed rezone. A public notice sign was also posted on-site two weeks prior to the scheduled hearing (**Attachment J**).

Property owners within the rezone area received a letter advising them of the rezone and providing public meeting materials (**Attachment K**).

There were no public comments when this staff report was finalized.

ZONE CHANGE OPTIONS AND ALTERNATIVES

The Commission may recommend approval to the Assembly for [49.75.130(a)]:

- Different zoning districts from what is requested by the applicant or recommended by staff.
- Different boundaries for the area to be rezoned.

Zoning district boundary lines are intended to follow property lines, centerlines of streets, alleys, streams (CBJ 49.25.110(f)).

Staff recommends that the rezone boundary proposed by CCTHITA be extended west to Capital Avenue. This extension provides for cohesive development. Lots on the same block have the same development standards, similar to the development dimensions under the Native Restricted Deeds.

Staff is not proposing an alternative zoning to that proposed.

FINDINGS

In accordance with CBJ 49.75 the Director makes the following findings on the proposed rezone:

1. Was the rezone application filed timely in accordance with CBJ 49.75.110?

Analysis: No additional analysis required.

Finding: **Yes.** The rezone application was filed in July of 2022.

2. Was adequate public notice provided in accordance with CBJ 49.75.110?

Analysis: CDD staff developed a basic project web site (<https://juneau.org/community-development/short-term-projects>), held a public meeting on December 16, 2022; mailed written notice to property owners within 500 feet of the proposed rezone; sent a letter to impacted land owners, and posted a public notice sign on the site two weeks prior to the scheduled hearing.

Finding: Yes. Adequate public notice was provided in accordance with CBJ 49.75.110.

3. *Is this request for an area covering more than two acres or an expansion of an existing zoning district as required by CBJ 49.75.120?*

Analysis: The proposed CCTHITA rezone is 3.7 acres and is west of existing MU zoning. The proposed extension is 0.5 acres.

Finding: Yes. The proposed rezone meets the minimum area. The proposed rezone is an extension of existing MU.

4. *Has no similar request been made within the previous 12 months as required by CBJ 49.75.120?*

Analysis: No additional analysis required.

Finding: Yes. No similar rezone request has been filed within the previous 12 months.

5. *Is the proposed zoning district and the uses allowed therein found to be in substantial conformance with the land use maps of the comprehensive plan and policies of the comprehensive plan, in accordance with CBJ 49.75.120?*

Analysis: No additional analysis required.

Finding: Yes. The proposed rezone is in substantial conformance with the land use maps and policies of the comprehensive plan.

6. *Is the proposed zoning district and the uses allowed therein found to be in substantial conformance with Title 49 – Land Use Code, in accordance with CBJ 49.75.120?*

Analysis: No additional analysis required.

Finding: Yes. The proposed rezone is in substantial conformance with Title 49 – Land Use Code.

RECOMMENDATION

Staff recommends the Planning Commission adopt the Director's analysis and findings and forward a recommendation of APPROVAL to the Assembly for the requested rezone of approximately 4.2 acres in the Aak'w Kwaan District from MU2 to MU, eliminating zoning setback requirements, lot coverage restrictions and height restrictions. This area includes 3.7 acres in the application, and a half-acre extension of the west boundary of the rezone to Capital Avenue.

Proposed Motion: *I move the Commission accept staff findings and analysis, and forward a recommendation of approval of AME2022 0006 to the Assembly; a rezone of approximately 4.2 acres in the Aak'w Kwan District, from MU2 to MU, eliminating zoning setback requirements, lot coverage restrictions and height restrictions. The area includes the 3.7 acres proposed by the Central Council of Tlingit and Haida Tribes of Alaska, and staff's proposed half acre extension westward to Capital Avenue. I ask for unanimous consent.*

STAFF REPORT ATTACHMENTS



Item	Description
Attachment A	Application
Attachment B	Proposed rezone: lot data
Attachment C	Proposed rezone extension: lot data
Attachment D	Proposed Ordinance Map
Attachment E	Native Restricted Deeds
Attachment F	Subdivision analysis
Attachment G	Agency Review Correspondence
Attachment H	Public Meeting Materials
Attachment I	Abutters Notice
Attachment J	Public Notice Sign
Attachment K	Letter to affected land owners

DO NOT WORRY ABOUT ASSIGNING
PARCEL #S ~~1/1~~



DEVELOPMENT PERMIT APPLICATION

NOTE: Development Permit Application forms must accompany all other Community Development Department land use applications. This form and all documents associated with it are public record once submitted.

PROPERTY LOCATION	
Physical Address Various parcels as noted on Plan	
Legal Description(s) (Subdivision, Survey, Block, Tract, Lot)	
Parcel Number(s)	
<input type="checkbox"/> This property is located in the downtown historic district <input type="checkbox"/> This property is located in a mapped hazard area, if so, which _____	
LANDOWNER/ LESSEE	
Property Owner Central Council Tlingit & Haida	Contact Person Elias Duran
Mailing Address 2631 Channel Dr	Phone Number(s) (907) 463-7397 (907) 790-3333
E-mail Address eduran@ccthita-nsn.gov	
LANDOWNER/ LESSEE CONSENT	
Required for Planning Permits, not needed on Building/ Engineering Permits. Consent is required of all landowners/ lessees. If submitted with the application, alternative written approval may be sufficient. Written approval must include the property location, landowner/ lessee's printed name, signature, and the applicant's name.	
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for the City and Borough of Juneau officials/employees to inspect my property as needed for purposes of this application.	
Central Council Tlingit & Haida Property Manager	
Landowner/Lessee (Printed Name) Title (e.g.: Landowner, Lessee)	
X  Landowner/Lessee (Signature)	<u>July 27, 2022</u> Date
Landowner/Lessee (Printed Name) Title (e.g.: Landowner, Lessee)	
X _____ Landowner/Lessee (Signature)	_____ Date
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours. We will make every effort to contact you in advance, but may need to access the property in your absence and in accordance with the consent above. Also, members of the Planning Commission may visit the property before a scheduled public hearing date.	
APPLICANT	
If same as LANDOWNER, write "SAME"	
Applicant (Printed Name) Central Council Tlingit & Haida	Contact Person Elias Duran
Mailing Address 2631 Channel Dr, Juneau, AK 99801	Phone Number(s) (907) 463-7397 (907) 790-3333
E-mail Address eduran@ccthita-nsn.gov	
X  Applicant's Signature	<u>July 27, 2022</u> Date of Application

To be completed by Applicant

DEPARTMENT USE ONLY BELOW THIS LINE

Intake Initials
IMG 7.28.2022

Case Number AME 22-006	Date Received 7/29/22
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INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.



ZONE CHANGE APPLICATION

See reverse side for more information regarding the permitting process and the materials required for a complete application.

NOTE: Must be accompanied by a DEVELOPMENT PERMIT APPLICATION form.

To be completed by Applicant

PROJECT SUMMARY
 This zone change is intended to revise the zoning from MU2 to MU for a number of contiguous properties under the ownership and management of CCTHITA. The proposed new zoning about portions of existing MU zoning, which is viewed as the most appropriate and flexible zoning for this portion of the new Village District, with future mixed use development similar in character to development in the downtown core with MU.

IS THIS AN EXPANSION OF AN EXISTING ZONE? Yes No

Total Land Area of Proposed Change 5 acres Comprehensive Plan Land Use Designation TTC

Current Zone(s) MU2 Comprehensive Plan Map Letter _____

New Zone Requested MU

TYPE OF ZONE CHANGE REQUESTED Regular Transition

Has this or a similar zone change been requested in the previous 12 months? Yes Case # _____ No

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

ALL REQUIRED MATERIALS ATTACHED

Complete application

Pre-Application Conference notes

Narrative including:

Purpose of the requested zone change

Any potential impacts to public infrastructure (streets, water, & sewer)

How the requested zone change comply with the maps and policies of the Comprehensive Plan

Site Plan and/or map of proposed zone change (details on reverse side)

-----DEPARTMENT USE ONLY BELOW THIS LINE-----

ZONE CHANGE FEES	Fees	Check No.	Receipt	Date
Application Fees	\$ _____			
Admin. of Guarantee	\$ _____			
Adjustment	\$ _____			
Pub. Not. Sign Fee	\$ _____			
Pub. Not. Sign Deposit	\$ _____			
Total Fee	\$ _____			

This form and all documents associated with it are public record once submitted.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

For assistance filling out this form, contact the Permit Center at 586-0770.

Case Number	Date Received
<u>AME22-006</u>	<u>7/29/22</u>

Zone Change Application Information

Zone changes are outlined in CBJ 49.75 article I

Pre-Application Conference: A pre-application conference is encouraged prior to submitting an application. The applicant shall meet with City & Borough of Juneau (CBJ) staff to discuss the Zone Change process and analysis. To schedule a pre-application conference, please contact the Permit Center at 586-0770 or via email at Permits@juneau.org.

Application: An application for a Zone Change will not be accepted by the CBJ until it is determined to be complete. **Zone Change may only be applied for during January and July.** The items needed for a complete application are:

1. **Forms:** Completed Zone Change Application and Development Permit Application.
2. **Fees:** The fee for Zone Change Application is \$600.00. No work can be approved with a Zone Change. All fees are subject to change.
3. **Project Narrative:** A detailed narrative describing the purpose for the requested zone change.
4. **Plans:** A site plan showing the following information:
 - A. The boundaries of the existing and proposed zone change and proposed buffers;
 - B. The location of existing structures (i.e. buildings, fences, signs, parking areas, etc.); and
 - C. The location of existing physical features of the site (i.e. drainage, topography, eagle trees, hazard areas, salmon streams, wetlands, etc.).
5. A traffic study may be required for zone changes.

Document Format: All materials submitted as part of an application shall be submitted in either of the following formats:

1. Electronic copies in the following formats: .doc, .txt, .xls, .bmp, .pdf, .jpg, .gif, .xlm, .rtf (other formats may be preapproved by the Community Development Department).
2. Paper copies 11" X 17" or smaller (larger paper size may be preapproved by the Community Development Department).

Application Review & Hearing Procedure: Once the application is determined to be complete, the Community Development Department will initiate the review and scheduling of the application. This process includes:

Review: The Community Development Department will evaluate the application for consistency with all applicable City & Borough of Juneau codes and adopted plans. Depending on unique characteristics of the Zone Change request, the application may be required to be reviewed by other municipal boards and committees. During this review period, the Community Development Department will coordinate the review of this application by other agencies, as necessary. **Review comments may require the applicant to provide additional information, clarification, or submit modifications/alterations for the proposed Zone Change.**

Hearing: Once an application has been reviewed by all applicable parties the Community Development Department will schedule the zone change for the next appropriate Planning Commission meeting. All Zone Change Applications will be reviewed by the Planning Commission who will send a recommendation to the Assembly. Following a recommendation of approval by the Planning Commission, the Community Development Department will coordinate the zone change review by the Assembly. In order for zone changes to become effective, they must be adopted by ordinance by the CBJ Assembly.

Public Notice Responsibilities: All Zone Change requests must be given the following public notice as outlined in CBJ 49.15.230:

Community Development Department: Will give notice of the pending Planning Commission meeting and its agenda in the local newspaper a minimum of 10-days prior to the meeting. Furthermore, the department will mail notices to all property owners within 500-feet of the project site.

The Applicant will post a sign on the site at least 14 days prior to the meeting. The sign shall be visible from a public right-of-way or where determined appropriate by CDD. Signs may be produced by the Community Development Department for a preparation fee of \$50, and a \$100 deposit that will be refunded in full if the sign is returned within seven days of the scheduled hearing date. If the sign is returned between eight and 14 days of the scheduled hearing \$50 may be refunded. The Applicant may make and erect their own sign. Please contact the Community Development Department for more information.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED



CENTRAL COUNCIL
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-9983

July 26, 2022

Ms. Jill Maclean, Director
CBJ Community Design and Development
Re: CCTHITA Rezone Application, Aak' w Kwaan Village District

Dear Ms. Maclean,

The Central Council of Tlingit and Haida Indian Tribes of Alaska, CCTHITA, is pleased to submit this application for a zone change of a number of parcels in the historic core of the newly named Aak' w Kwaan District. Per the attached graphic, CCTHITA is hoping to revise the indicated properties from MU2 to MU zoning. Each of the properties identified in this block is controlled by Central Council.

The strategic reasons for this are identified as follows. First, MU is the predominant underlying zoning in the developed urban core of Juneau, and abuts the new rezone parcel along Willoughby Street, or the northeasterly edge of the property.

Second, this rezone to MU is consistent with the Comprehensive Plan in this area, which indicates the proposed area is "TTC", Traditional town Center, also consistent with other northeasterly areas of the established downtown core.

Third, this rezone will allow somewhat greater flexibility to CCTHITA as upgrades and new projects are considered in our downtown central properties. The ability of MU to build to property lines, along with greater height flexibility, will allow us the potential for more efficient mixed-use solutions in this area.

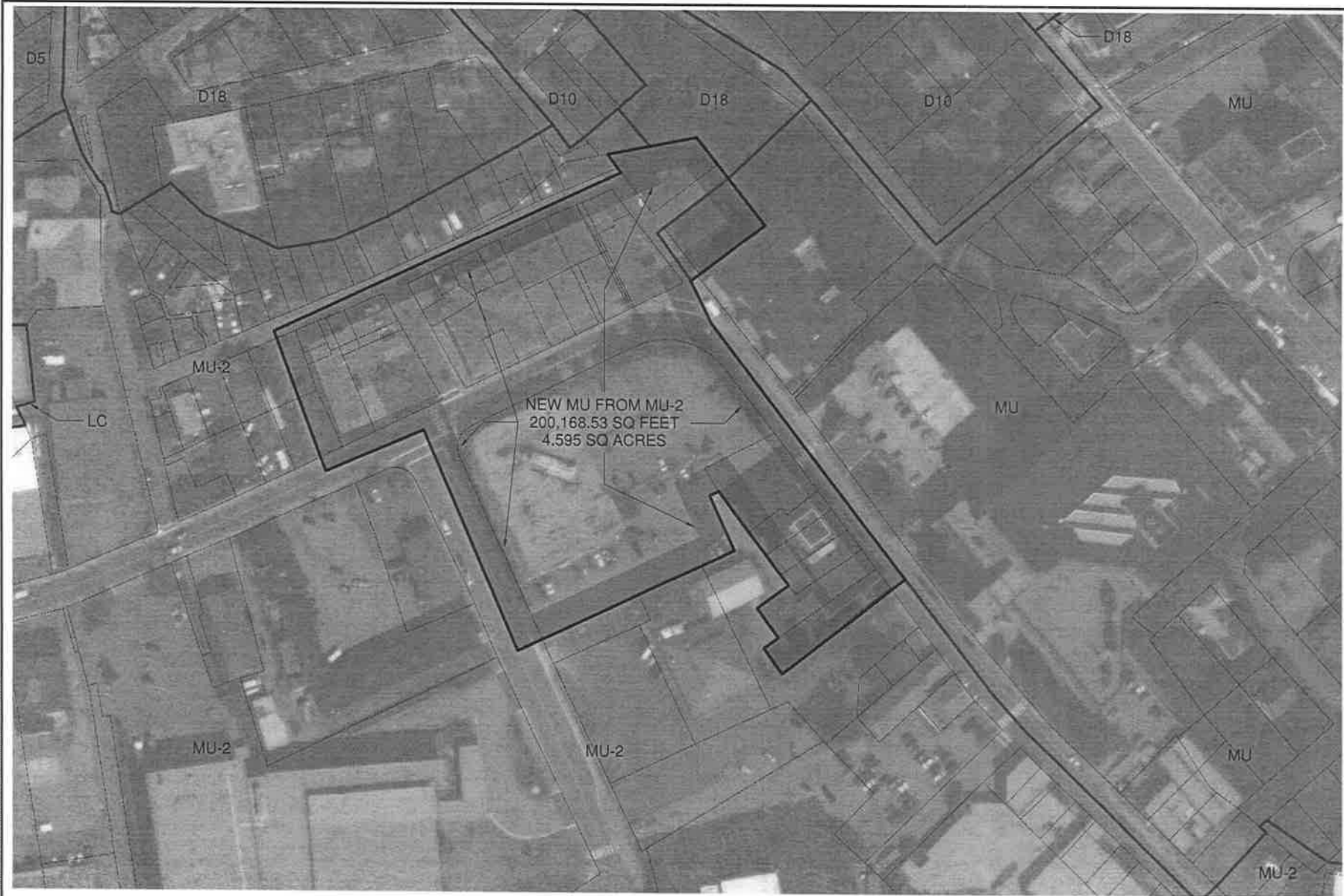
Please contact us with any questions.

Sincerely,

Elias Duran-Manager
Property Management
KIRA Services LLC
A subsidiary of Tlingit Haida Tribal Business Corp
2631 Channel Dr
Juneau, Alaska 99801
Office: (907) 463-7397
Mobile: (907) 790-3333

www.kira.com
eduran@kira.com





MRV
ARCHITECTS
ARCHITECTURE PLANNING INTERIORS

MRV ARCHITECTS
1420 GLACIER AVE. #101
JUNEAU, AK 99901
907-586-1371
FAX 907-463-5544
mrv@mrvarchitects.com

ZONE CHANGE APPLICATION

For The
Central Council of the Tlingit and Haida Indian Tribes of Alaska
MRV # 2315

No.	Description	Date

SHEET TITLE:
PROPOSED ZONE
CHANGE PLAN

DATE: 6.10.2022

DRAWN: MRV
CHECKED: PV

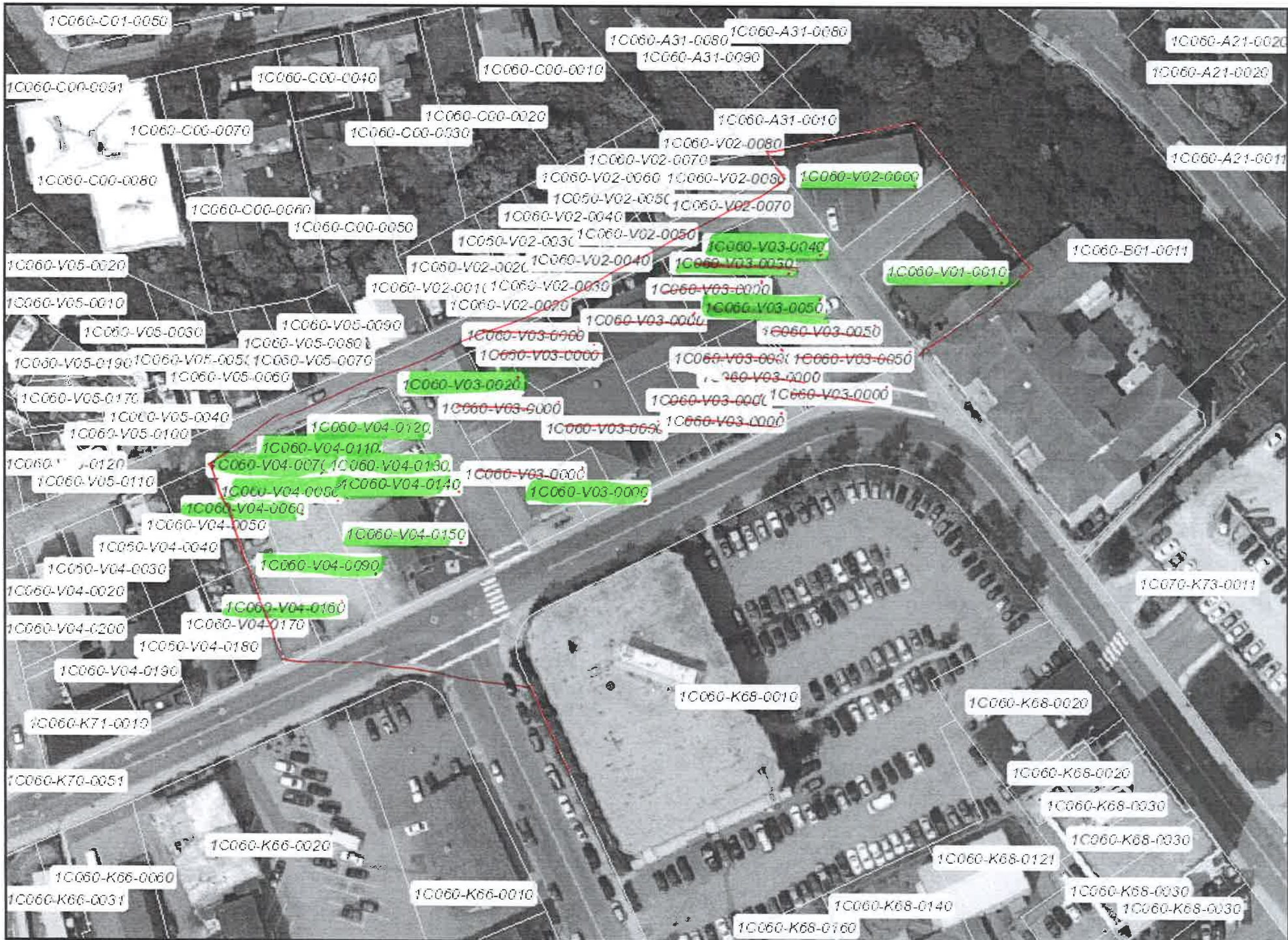
SHEET NO.

A100

1 PROPOSED ZONE CHANGE
1" = 100'-0"

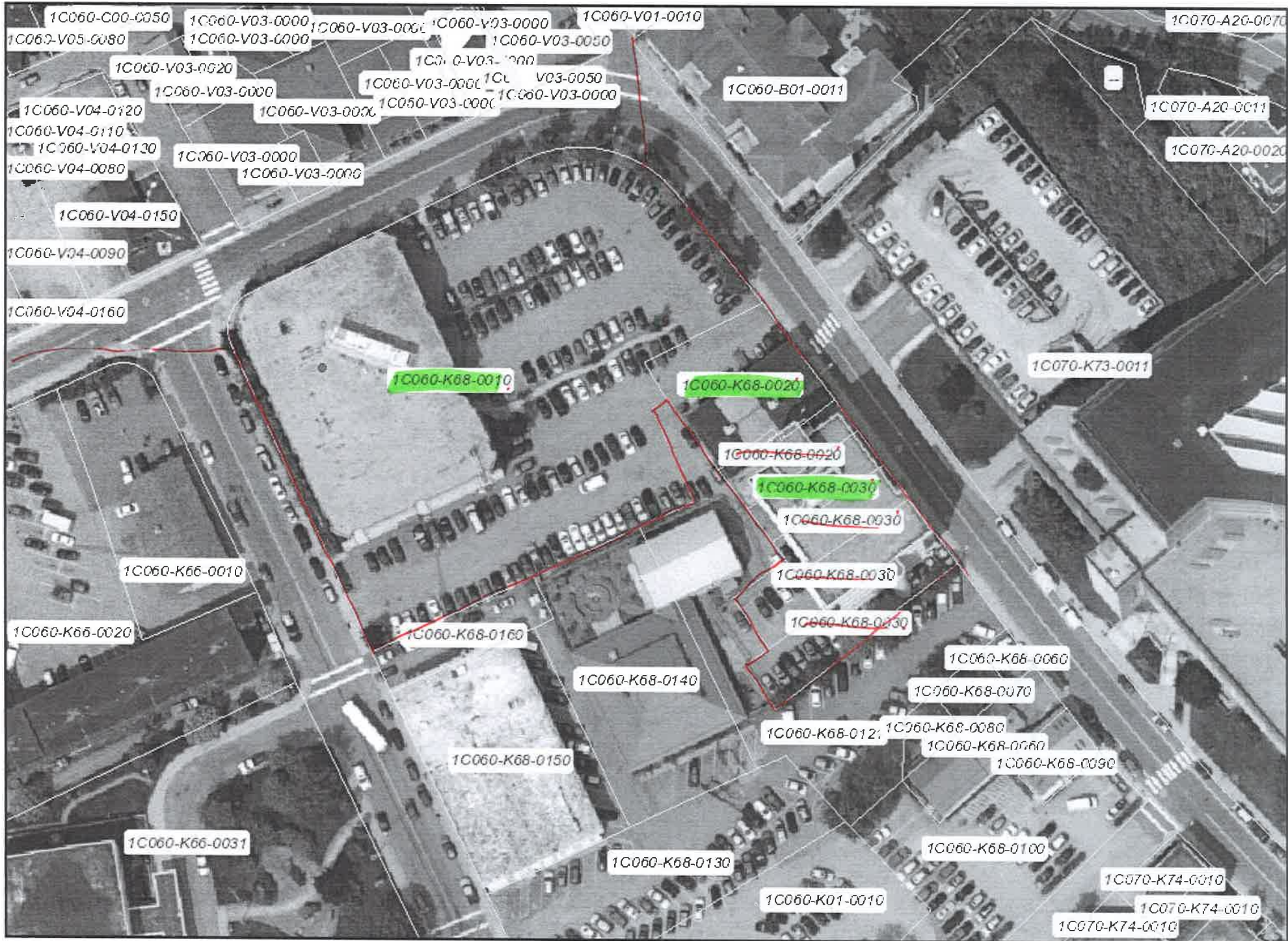
ACTUAL NORTH
PROJECT NORTH

2/24/2022 13:28:08 PM \\mr\201\file\proj\2022\2315_CENTRA_Downtown_Planning\01\0402_MRP.mxd



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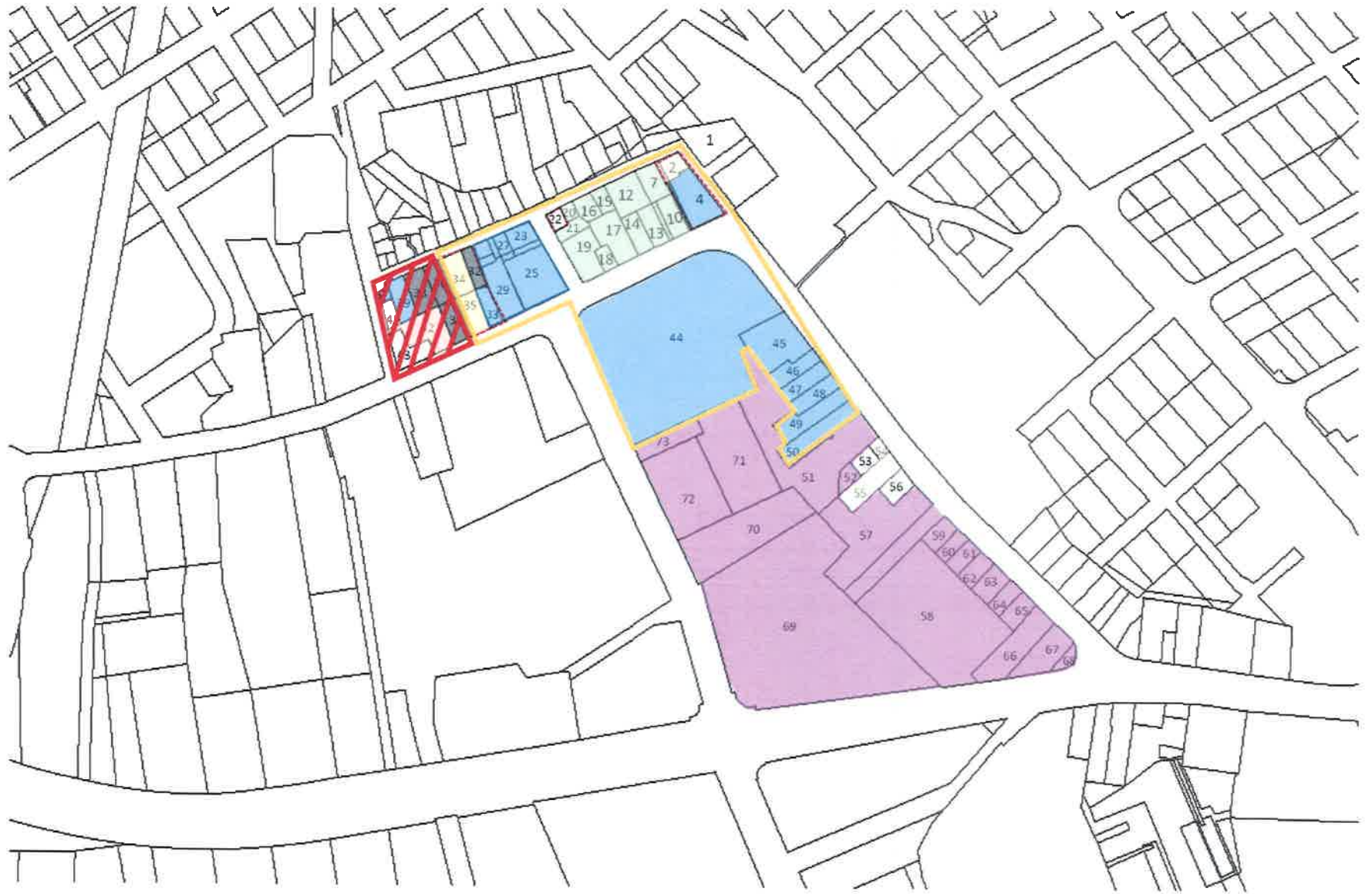


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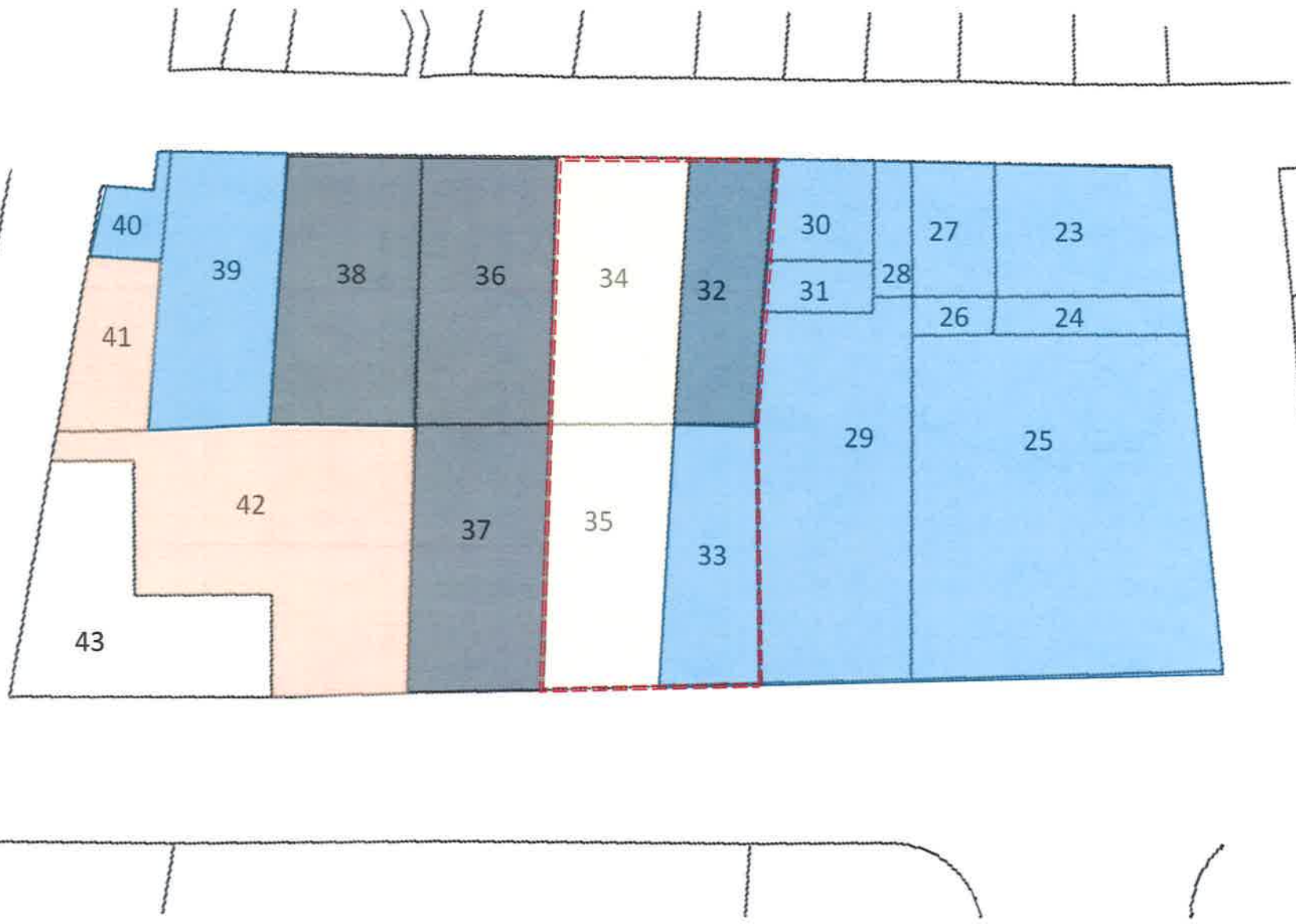


1	1C060V020000	Patagonia Condominium Association	
2	1C060V030040	Kunz Nyman Jackson Rimot Hillman	Native Restricted Deed
3	1C060V030030	Kunz Nyman Jackson Rimot Hillman	Native Restricted Deed
4	1C060V030050	CCTHITA	Native Restricted Deed
5	1C060V030050	CCTHITA	Native Restricted Deed
6	1C060V030050	CCTHITA	Native Restricted Deed
7	1C060V030000	TH/ANB Condominium Association	
8	1C060V030000	TH/ANB Condominium Association	Native Restricted Deed
9	1C060V030000	TH/ANB Condominium Association	Native Restricted Deed
10	1C060V030000	TH/ANB Condominium Association	
11	1C060V030000	TH/ANB Condominium Association	
12	1C060V030000	TH/ANB Condominium Association	
13	1C060V030000	TH/ANB Condominium Association	
14	1C060V030000	TH/ANB Condominium Association	
15	1C060V030000	TH/ANB Condominium Association	
16	1C060V030000	TH/ANB Condominium Association	
17	1C060V030000	TH/ANB Condominium Association	
18	1C060V030000	TH/ANB Condominium Association	
19	1C060V030000	TH/ANB Condominium Association	
20	1C060V030000	TH/ANB Condominium Association	
21	1C060V030000	TH/ANB Condominium Association	
22	1C060V030020	Brown & Price & Willis	
23	1C060V040120	CCTHITA	
24	1C060V040130	CCTHITA	
25	1C060V040150	CCTHITA	
26	1C060V040080	CCTHITA	
27	1C060V040070	CCTHITA	
28	1C060V040100	CCTHITA	
29	1C060V040090	CCTHITA	
30	1C060V040070	CCTHITA	
31	1C060V040080	CCTHITA	
32	1C060V040060	CCTHITA CO TH/ANB #5	Native Restricted Deed
33	1C060V040160	CCTHITA	Native Restricted Deed
34	1C060V040050	Howard, Hotch, Peters, Peters	Native Restricted Deed
35	1C060V040170	Howard, Hotch, Peters, Peters	Native Restricted Deed
36	1C060V040040	CCTHITA CO TH/ANB #5	
37	1C060V040180	CCTHITA CO TH/ANB #5	
38	1C060V040030	CCTHITA CO TH/ANB #6	
39	1C060V040020	CCTHITA	
40	1C060V040010	CCTHITA	
41	1C060V040200	Alaska Prime Rentals	
42	1C060V040190	Alaska Prime Rentals	
43	1C060K710010	JC Bear Group LLC	
44	1C060K680010	CCTHITA	
45	1C060K680020	CCTHITA	
46	1C060K680020	CCTHITA	
47	1C060K680030	CCTHITA	
48	1C060K680030	CCTHITA	
49	1C060K680030	CCTHITA	
50	1C060K680030	CCTHITA	
51	1C060K680121	CBJ L&R	
52	1C060K680080	CBJ L&R	
53	1C060K680070	Cristobal	
54	1C060K680060	Bullwinkles	
55	1C060K680060	Bullwinkles	
56	1C060K680090	Teamsters Local 595	
57	1C060K680100	CBJ L&R	
58	1C070K740010	CBJ L&R	
59	1C070K740010	CBJ L&R	
60	1C070K740010	CBJ L&R	

61	1C070K740010	CBJ L&R	
62	1C070K740010	CBJ L&R	
63	1C070K740010	CBJ L&R	
64	1C070K740010	CBJ L&R	
65	1C070K740010	CBJ L&R	
66	1C070K740010	CBJ L&R	
67	1C070K740010	CBJ L&R	
68	1C070K740010	CBJ L&R	
69	1C060K010010	JAHC, CBJ L&R	
70	1C060K680130	CBJ L&R	
71	1C060K680140	CBJ L&R	
72	1C060K680150	CBJ L&R	
73	1C060K680160	CBJ L&R	







Proposed Rezone: Ownership

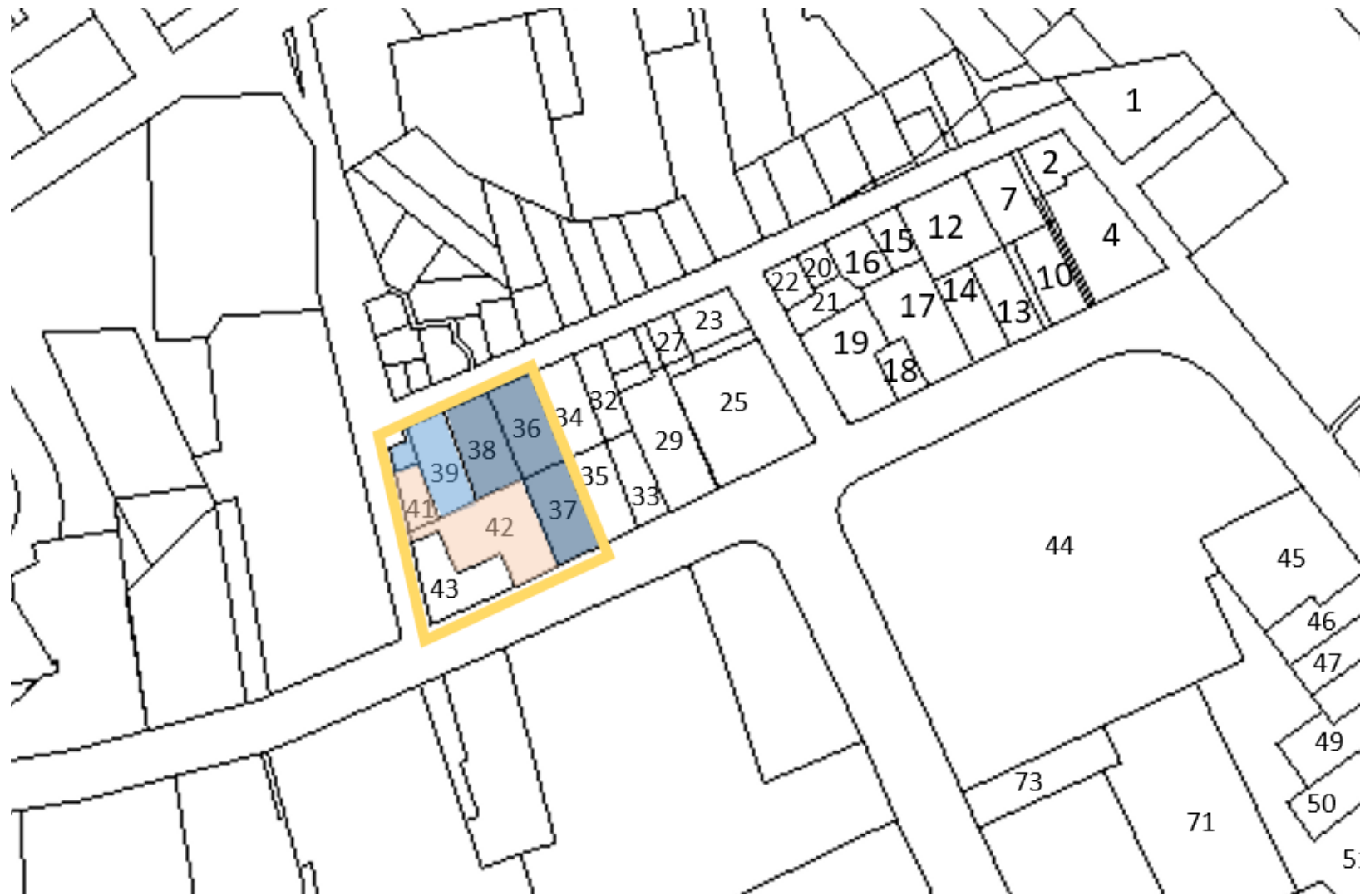
Parcel Number	Owner	Notes	Property Address	Legal Description	Lot size, square feet	Conforms?		
						4,000?	3,000?	Width 50'
1C060V020000	Patagonia Condominium Association		42-54 Gordon Street	JUNEAU INDIAN VILLAGE BL 2 LT 9A [PATAGONIA CONDO LAND]	4686	Y	Y	Y
1C060V010010	THRHA	ALREADY MU	250 Village Street	JUNEAU INDIAN VILLAGE BL 1				
1C060V030040	Kunz Nyman Jackson Rimot Hillman	Native Restricted Deed	305 Village Street	JUNEAU INDIAN VILLAGE BL 3 LT 8	1321	N	N	N
1C060V030030	Kunz Nyman Jackson Rimot Hillman	Native Restricted Deed		JUNEAU INDIAN VILLAGE BL 3 LT 7	268	N	N	N
1C060V030050	CCTHITA	Native Restricted Deed		JUNEAU INDIAN VILLAGE BL 3 LT 9	5008	Y	Y	Y
1C060V030050	CCTHITA	Native Restricted Deed						
1C060V030000	TH/ANB Condominium Association		320 Willoughby Avenue	INDIAN VILLAGE BL 3 LT 12 - 18 (TH ANB CONDO LAND)	26053	Y	Y	N
1C060V030000	TH/ANB Condominium Association	Native Restricted Deed		US 4694, 128 sf		N	N	N
1C060V030000	TH/ANB Condominium Association	Native Restricted Deed		US 4694, 368 sf		N	N	Y
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 12, 2117 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 13, 482 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 5, 3568 sf		N	Y	Y
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 14, 1994 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 15, 2065 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 4, 1088 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 3, 1477 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 16, 409X (illegible)		Y	Y	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 17, 1004 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 18, 3870 sf		N	Y	Y
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 2, 605 sf		N	N	N
1C060V030000	TH/ANB Condominium Association			US 4694 Lot 19, 1199 sf		N	N	N
1C060V030020	Brown & Price & Willis		343 Village Street	JUNEAU INDIAN VILLAGE BL 3 LT 1	850	N	N	N
1C060V040120	CCTHITA		353 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 12	1637	N	N	N
1C060V040130	CCTHITA	Front on Warrior St.		JUNEAU INDIAN VILLAGE BL 4 LT 13	507	N	N	N
1C060V040150	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 14	7015	Y	Y	Y
1C060V040140	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 13	218	N	N	N
1C060V040110	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 11	744	N	N	N
1C060V040100	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 10	340	N	N	N
1C060V040090	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 9	3880	N	Y	N
1C060V040070	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 7	676	N	N	N
1C060V040080	CCTHITA			JUNEAU INDIAN VILLAGE BL 4 LT 8	385	N	N	N
1C060V040060	CCTHITA CO TH/ANB #5	Native Restricted Deed	369 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 6	1487	N	N	N
1C060V040160	CCTHITA	Native Restricted Deed	406 Willoughby Avenue	JUNEAU INDIAN VILLAGE BL 4 LT 15	1616	N	N	N
1C060V040050	Howard, Hotch, Peters, Peters	Native Restricted Deed	375 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 5	2335	N	N	N
1C060V040170	Howard, Hotch, Peters, Peters	Native Restricted Deed		JUNEAU INDIAN VILLAGE BL 4 LT 16	2198	N	N	N
1C060K680010	CCTHITA		410 Willoughby Avenue	KASAAN CITY LT 2	70700	Y	Y	Y
1C060K680020	CCTHITA		400 Willoughby Avenue	TIDELANDS ADDITION BL 68 LT 1 & 2	8555	Y	Y	Y
1C060K680020	CCTHITA							
1C060K680030	CCTHITA		400 Willoughby Avenue	TIDELANDS ADDITION BL 68 LTS 3 - 6 & 12 FR	13899	Y	Y	N
1C060K680030	CCTHITA			1934 plat does not have adequate detail for size of individual lots				
1C060K680030	CCTHITA							
1C060K680030	CCTHITA							

TOTAL 154378
ACRES 3.54403122

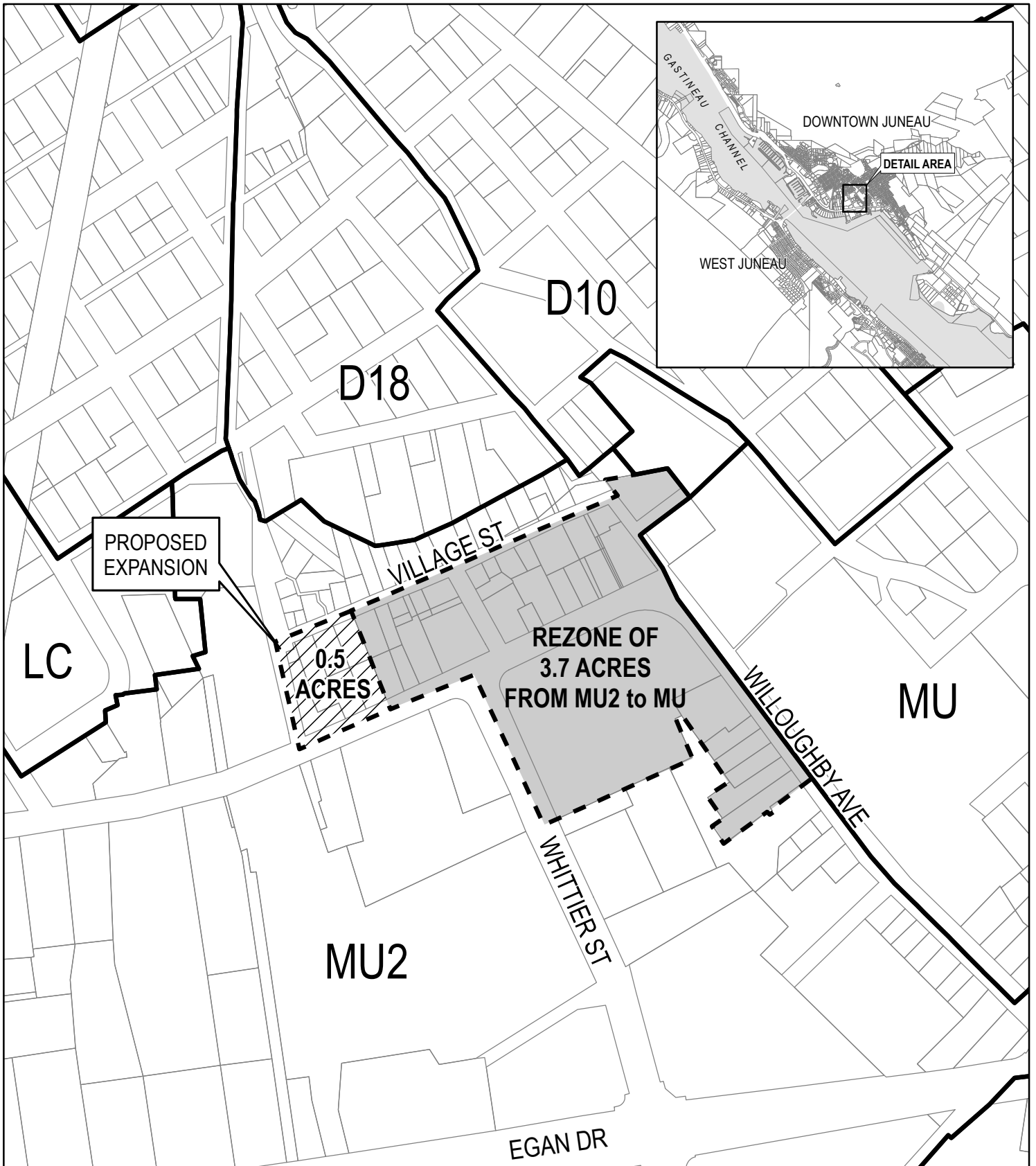


Proposed Rezone: Ownership

									Conforms?		
Parcel Number	Owner	Notes	Property Address	Legal Description	Lot size, square feet	4,000?	3,000?	Width ³ 50'			
36	1C060V040040	CCTHITA CO TH/ANB #5	379 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 4	2474	N	N	N			
37	1C060V040180	CCTHITA CO TH/ANB #5	Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 17	2440	N	N	N			
38	1C060V040030	CCTHITA CO TH/ANB #6	379 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 3	2579	N	N	N			
39	1C060V040020	CCTHITA	383 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 2	2158	N	N	N			
40	1C060V040010	CCTHITA		JUNEAU INDIAN VILLAGE BL 4 LT 1	337	N	N	N			
41	1C060V040200	Alaska Prime Rentals		JUNEAU INDIAN VILLAGE BL 4 LT 19	959	N	N	N (47.08)			
42	1C060V040190	Alaska Prime Rentals	434 W WILLOUGHBY AVE	JUNEAU INDIAN VILLAGE BL 4 LT 18	4323	Y	Y	N			
43	1C060K710010	JC Bear Group LLC	436 Willoughby Ave	TIDELANDS ADDITION BL 71 LT 1	2662	N	N	Y			
TOTAL					17932						
ACRES					0.411662						

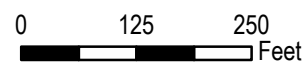


Attachment C- Proposed rezone extension: lot data



Ord. No. 2023-XX
 Zone Change for
 portions of the Aak'w Kwaan District
 from MU2 to MU

CDD Case: AME20220006



MEMORANDUM

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

TO: Cheryl Easterwood, Community Development Director
Charlie Lundfelt, Fire Chief
Richard Gummow, Police Chief
Joe Buck, Engineering Director
Craig Duncan, Finance Director
Ernie Mueller, Public Works Director

FROM: Donna Pierce, Deputy City Manager

SUBJECT: Enforcement in the Indian Village

DATE: May 15, 1997

Received
on
MAY 15 1997

CBJ
Permit Center

For a long time, there has been considerable confusion and inconsistency in the CBJ's enforcement of codes in the Indian Village. This continues to be a problem, not just between departments, but within departments. In general, traffic codes, penal codes, and building, housing and fire codes which affect health and safety are all enforceable.

Attached is a memorandum from Debbie Purves that accurately describes what the CBJ can and can't do in the Village. Please make sure that ALL your employees who have responsibilities in this area have this information and apply it consistently! A uniform and consistent effort is what is required to solve the problems that have been identified.

If you have questions, please call me or John Hartle in the Law Department. Thank you.

cc: Mayor Dennis Egan
Dave Palmer, City & Borough Manager
John Hartle, Assistant Attorney
Laurie Sica, Environmental/Zoning Inspector



MEMORANDUM

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

DATE: May 2, 1995

TO: David R. Palmer, Manager
City & Borough of Juneau

FROM: Debbie Purves, Environ./Zoning Inspector
Community Development Department



FILE NO: 7700

SUBJECT: CBJ Code Enforcement in the Juneau Indian Village

Many meetings and discussions with regard to what code enforcement was possible has taken place with concerned citizens involved with the area known as the "Juneau Indian Village" or "the Village" over the past 10 years. The Village resembles a patch work quilt of restricted and non-restrictive lots. A map is enclosed which shows which lots are restricted and non-restricted as of April 1995.

This memorandum is a summary of understanding from which I will proceed with code enforcement in the Juneau Indian Village. A letter which outlines specific code violations and suggested solutions relative to individual properties will be sent to the property owners.

Formerly it was more difficult to distinguish between restricted and non-restricted lots. Also there was uncertainty as to what laws applied to native restricted lots. Therefore due to this uncertainty in the past, many CBJ laws were not enforced in the Village. Recent surveys and the placement of corner monuments have enabled better understanding of the field location of the various lots. A 34 page letter from the United States Department of the Interior also helped to clarify enforcement issues with regard to restricted lots.

The enforcement authority with respect to the restricted lots varies. A May 2, 1989, letter from the United States Department of the Interior helped to outline what codes apply to restricted lots. Based on review of the May 2, 1989, Department of the Interior letter, the following is a summary of assumptions which form the basis for CBJ enforcement on the restricted properties in the Village:

1. The Village is zoned D-18 which is a multifamily residential zone. The Land Use Code which regulates what uses are allowed in specific zones does not apply.
2. No real property taxes can be levied by CBJ.
3. No liens may be placed on the restricted lots by the CBJ.
4. There is no recognized Indian Tribal governmental entity exercising governmental authority over the Juneau Indian Village.



5. 1926 Alaska Native Townsite Act supplemental to the March 3, 1891. Act expressed no intent to preclude state or municipal exercise of regulatory jurisdiction over restricted townsite lots.
6. In 1953 Congress enacted Public Law 280. This laid the ground work for criminal law enforcement.
7. There is no authority under federal Public Law 280 to allow the State court adjudication of the ownership or right of possession of such property.
8. The federal statute 25 U.S.C. Section 231 relevance would be as federal authorization of municipal inspection or enforcement activity with respect to health, sanitation and school attendance.
9. Traffic codes are enforceable in the entire Village.
10. Penal codes are enforceable on all lots.
11. Building, housing, and fire codes which affect health and safety on restricted lots and other lots in the area are enforceable on all lots.
12. The CBJ may not affect ownership of the restricted lots.
13. The Juneau Indian Village was never formally designated as an Indian reservation. A non-restricted lot is no different than other private property elsewhere in the City and Borough of Juneau (CBJ) and is subject to all the same laws and ordinances. The fact that these lots are within the boundaries of the Juneau Indian Village does not affect the non-restricted lots requirement to comply with all CBJ laws.
14. The ownership of non-restricted lots by natives does not affect the need to comply with all CBJ laws.
15. All laws and CBJ ordinances apply to the streets and right-of-ways within the Village.

The status of lot restriction was determined by review of CBJ assessor records and discussions with Cheri Renner of Tlingit and Haida Central Council.

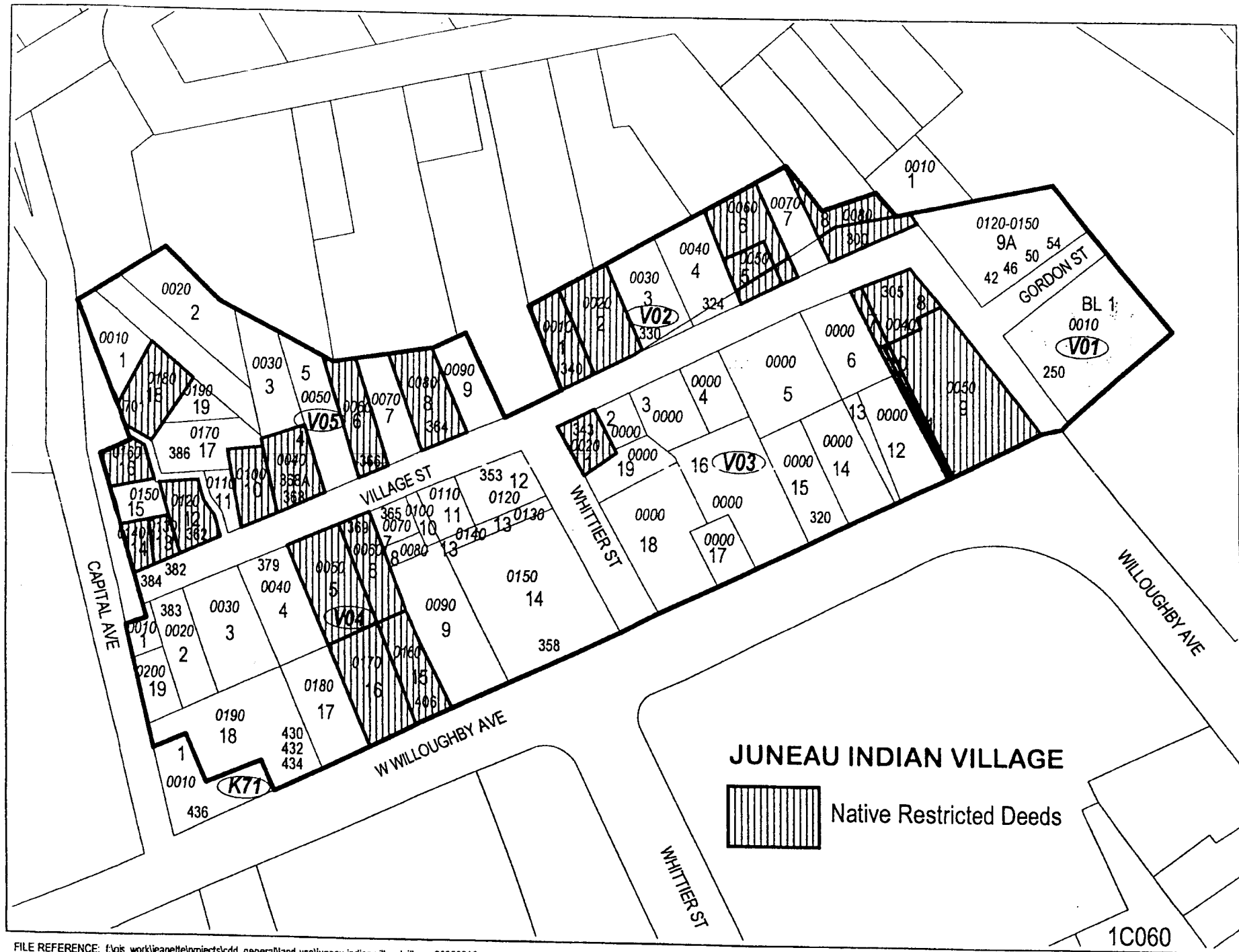
The staff doing code enforcement should make every attempt to allow this new code enforcement stance without resort to fines, letters of violation, or law department action. Communication and education are always the first steps to use to gain voluntary compliance.

Although failure to comply with the litter laws will result in the issuance of tickets. Failure to comply with the fire code or building code may result in notice of violation letters and subsequent legal action. Failure to comply with the land use code on non-restricted lots may result in notice of violation letters, compliance orders, and as a final resort, legal action.

David R. Palmer
File No.: 7700
May 18, 1995
Page 3

I believe through the kick off clean up campaign scheduled for May 15 and 16, 1995; notice to individual property owners; the use of the CBJ codes handout (copy attached); and continued enforcement presence in the Village will result in a cleaner and safer community.

cc: Murray Walsh, Director CDD
Chris Roust, CBJ Building Official
Richard Gummow, Chief of Police
Charles Lundfelt, CBJ Fire Chief
John Corso, City Attorney
Dennis Egan, CBJ Mayor
Ed Thomas, President Tlingit Haida Central Council
BIA, Juneau Office
Ed Kunz, President Auke Tribe Council (300 Village St.)
Debra Purves, Environ./Zoning Inspector



FILE REFERENCE: f:\gis_work\jeanette\projects\cdd_general\and use\juneau indian village\juneau_20060816.apr
 DATE: Aug 17, 2006



18 SOUTH SEWARD STREET
JUNEAU ALASKA 99801

May 8, 1995

Subject: Code Enforcement in Juneau Indian Village

To Whom It May Concern:

The City and Borough of Juneau (CBJ) wants to work with the property owners to address health, sanitation, and safety concerns in the Village. This letter is to inform you of this effort and ask your assistance. The CBJ will proceed with enforcement of all city laws on the non-restricted properties (including zoning laws) and city streets. On native restricted properties city laws which concern health, sanitation and safety will be enforced.

Guidelines to follow for litter laws include:

1. All garbage is to be kept in garbage containers with tight fitting, overlapping lids. No bags of garbage are to be stockpiled or kept in vehicles for storage.
2. Property is to be kept litter free with no accumulation of waste, broken, or discarded items. This includes junk cars which are not scheduled for repair.
3. No use of the outdoors for restroom functions.
4. Living in cars, trucks, and abandoned buildings is not allowed as there are no restrooms to use.

Guidelines to follow for building code laws include:

1. All new structures need a building permit. Building permit review and inspections will assure that minimum safety and fire code standards are met.
2. All mobile homes and R/V's which are used as residences need a building permit. Connection to water, sewer, electricity, safe entrance stairs, fuel source connections, smoke detectors, skirting, and foundations are some of the concerns of building permit inspections.
3. Buildings which contain a business will need to comply with fire and building codes required based on the type of business. Contact the CBJ building division at 586-5230 for your questions.

Guidelines to follow for fire laws include:

1. All new fuel storage tanks or wood stoves planned to be put in, need to be reviewed and inspected with a building permit to assure basic safety standards are met.
2. Existing unsafe fuel storage tanks, propane tanks, and wood stoves will need to be reviewed and reinstalled using the building permit process.

Letters will be sent to individual property owners notifying them of the results of the March 1995 lot by lot survey done by CBJ. Please contact Debbie Purves at Community Development (586-5230) to discuss these letters and let us know your concerns after you have had a chance to read the letters.

In a joint effort between CBJ, Property Owners, and the Tlingit-Haida Central Council, a clean up campaign will be held May 15 and 16, 1995. Your participation will make the clean up more thorough and effective.

All refuse items accumulated in the village will be allowed to be dumped as part of this clean up. If there are junk vehicles on your property please fill out one of the attached "Junk Vehicle Removal Request Forms" and return it to the CBJ Community Development as soon as possible. Regular household garbage is generated daily and should be taken care of and not stockpiled in anticipation of the clean up event.

Call Junk Busters at 586-5274 to leave a message 24 hours a day about litter problems, junk vehicles, or other health and sanitation problems or the Juneau Police Department at 586-2780. Thank you for your attention to this letter.

Sincerely,

Debra J. Purves

Debra J. Purves
Environ/Zoning Inspector
Community Development



United States Department of the Interior

OFFICE OF THE SOLICITOR ALASKA REGION

4230 University Drive
Suite 300

Anchorage, Alaska 99508-4626
(907) 271-4131

October 4, 2002

Roberta Wolfe, Realty Specialist
Central Council of Tlingit & Haida Indian Tribes of Alaska
320 West Willoughby Avenue, Suite 300
Juneau, Alaska 99801-9983

By Facsimile to: (907) 463-7361

Dear Ms. Wolfe:

Subject: Municipal Code Enforcement in the Juneau Indian Village

By letter dated September 3, 2002, you have asked this office whether the views expressed in our legal opinion of May 2, 1989 have changed, or whether that opinion continues to reflect our current views. This is to inform you that in large measure, the analysis set forth in the 1989 memorandum would still appear to be accurate.

It might be argued that post-1989 Supreme Court opinions such as *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 U.S. 114 124 L.Ed.2d 30, 113 S.Ct. 1985 (1993), and *Oklahoma Tax Commission v. Citizen Band of Potawatomi Tribe of Oklahoma*, 498 U.S. 505, 112 L.Ed.2d 1112, 111 S.Ct. 905 (1991) have emphasized the limits of state authority in *all* Indian country, and not just Indian country within reservation boundaries. Granted, these cited decisions were tax cases, but they would seem to cast doubt more generally on any claim of state jurisdiction over non-reservation Indian country, perhaps including restricted Alaska Native townsite lots. If restricted Alaska Native townsite lots are allotment Indian country, one might assert that the State and its political subdivisions possess very little civil governmental jurisdiction over such restricted Native townsite lots. On the other hand, that argument can at least be partially countered by noting that in Juneau we are not dealing with a situation involving a federally recognized Indian Tribe which is a competing sovereign, whose retained jurisdiction would be infringed upon by the exercise of state authority.

Moreover, there was an important indication of Congressional intent which we overlooked in our 1989 analysis, which strongly suggests that the City and Borough of Juneau *would* have land use regulatory jurisdiction over restricted Native townsite lots in the Juneau Indian Village. In *Sac and Fox, supra*, the Supreme court summarized an aspect of its holding thusly:

Absent explicit congressional direction to the contrary, we presume against a State's having the jurisdiction to tax within Indian country, whether the particular territory consists of a formal or informal reservation, allotted lands, or dependent Indian communities.

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(Emphasis added). 508 U.S. at 128, 124 L.Ed.2d at 43. In the case of Alaska Native restricted townsite lots, one can argue that there is indeed "explicit congressional direction to the contrary."

The relevant statutory provision, which we regrettably overlooked in our 1989 analysis, was the Act of July 24, 1947, 62 Stat. 35, formerly codified at 43 U.S.C. § 738 (1970):

§ 738. Zoning power in Alaska.

The Legislature of the Territory of Alaska is authorized to exercise or to provide for the exercise of zoning power, through a Territorial Zoning Commission or otherwise, in town sites on the public lands of the United States in Alaska; except that such power shall not extend to lands or buildings while they are being utilized by, or to buildings or other structures while they are being constructed by or for, the United States.

This broad unqualified delegation to the Territorial Legislature of land use regulation authority within federal townsites seems to have remained on the books after Statehood. It would appear to have been carried over pursuant to § 8(d) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339. It was eventually repealed along with numerous other federal land laws by § 703(a) of the Federal Land Policy & Management Act of October 21, 1976 (FLPMA), Pub.L. 94-579, 90 Stat. 2743, 2790.

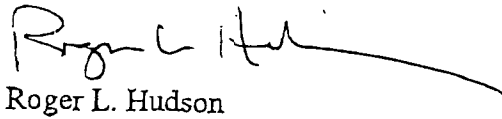
The significance of § 738 is that it represents an explicit congressional direction that the Territorial Government, predecessor to the State of Alaska, was to possess jurisdiction to regulate private land use within Federal townsites through exercise of the zoning power. There is nothing in the text of that 1947 enactment to suggest that it did not extend Territorial regulatory jurisdiction to restricted as well as unrestricted townsite lots. On its face the statute authorizes exercise of zoning power "in town sites on the public lands." Indeed, it is difficult to argue that Congress was unaware in enacting § 738 in 1947 that it could be read to apply to Native restricted townsite lots issued pursuant to the Alaska Native Townsite Act of May 25, 1926, 44 Stat. 629, as well as other land within a Federal townsite. After all, Congress is presumed to be aware of its own prior enactments, and to legislate against the backdrop of such existing law. Moreover, Congress affirmatively demonstrated its awareness of the existence of the 1926 law, and of individual restricted Native land holdings within Federal townsites, less than a year later when it passed the Act of February 26, 1948, 62 Stat. 35. That legislation, codified as 43 U.S.C. § 737 (1970), authorized the issuance of *unrestricted* townsite lot deeds to Alaska Natives, which had not been explicitly authorized under the 1926 statute.

Consideration of the congressional intent reflected in enactment of the former 43 U.S.C. § 738 would appear to strengthen the case for the existence of municipal jurisdiction to regulate

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land use on restricted Native townsite lots, and therefore supports our prior 1989 conclusion that the City and Borough of Juneau would not clearly be over-stepping its authority if it sought to enforce provisions of its municipal code in the Juneau Indian Village.

I hope this reconfirmation of the 1989 opinion is helpful. Please give me a call if I can be of further assistance.



Roger L. Hudson

cc: Alaska Regional Director, BIA
Acting Realty Officer, Alaska Region, BIA



United States Department of the Interior

OFFICE OF THE SOLICITOR
ALASKA REGION

222 West 8th Avenue, #34
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IN REPLY REFER TO:

BIA.AK.0306

May 2, 1989

MEMORANDUM

RECEIVED
MAY 04 1989

TO: Acting Area Director
Juneau Area Office
Bureau of Indian Affairs

BUREAU OF INDIAN AFFAIRS
OFFICE OF THE AREA DIRECTOR

FROM: Attorney
Office of the Regional Solicitor
Alaska Region

SUBJECT: Juneau City and Borough Municipal Code Enforcement
in "Juneau Indian Village"

Beginning in the summer of 1988 this office had several discussions with former Acting Area Director Youngdeer and members of his staff regarding requests from the City and Borough of Juneau for guidance as to limitations placed on the municipal government by federal law with respect to applicability of local ordinances to real property and property owners within the area or neighborhood known as the "Juneau Indian Village." In September we received a letter from City-Borough Attorney Barbara Blasco which provided some greater detail as to the municipal government's concerns and asked for legal guidance as to the extent of its regulatory and enforcement authority. Most helpfully, that letter identified at least in general terms the provisions of the city-borough code which Juneau officials hoped to enforce in the Indian Village, and included a color-coded map of the five blocks comprising the Juneau Indian Village, depicted by U.S. Survey No. 4694. Rather than replying directly to the City-Borough Attorney, we are furnishing this memorandum to you with the assumption that you will be sharing it with municipal officials and others, although that decision is of course left to your discretion.

According to the map furnished by the City-Borough Attorney, there are four categories of land ownership in the Juneau Indian Village. Of the total of 69 surveyed lots, the map indicates that 30 are held in restricted status, 15 are owned by the Alaska Native Brotherhood (ANB), and the remaining 24 are owned in

unrestricted status. The properties in the latter two categories do not present any great analytic difficulty, and we will accordingly briefly address their status first, along with some observations about the status of the surveyed streets and roads. We will then proceed to a discussion of the more difficult problems presented by the lots held in restricted status.

I. Unrestricted Lots

From the jurisdictional standpoint, the lots held in unrestricted status are no different than any other private property in the City of Juneau. Although the history leading up to their present fee simple ownership status may be somewhat atypical, the municipality's authority to legislatively regulate their use, and to enforce such regulations, consistent with otherwise applicable local, state, and constitutional legal standards, is not in any way affected by their location within the boundaries of the so-called "Juneau Indian Village." After all, the claims of title to most of the surrounding private properties also trace their roots back to patents issued by the BLM townsite trustee pursuant to federal townsite laws. See e.g., history recited in Oswald v. Columbia Lumber Co., 425 P.2d 240 (Alaska 1967).

The Juneau Indian Village, despite its name, was never formally designated as an Indian reservation, so none of the relatively complex case law relating to conflicts between tribal and state and local regulatory jurisdiction over fee land within a reservation need be considered. Cf. e.g. Montana v. United States, 450 U.S. 544, rehearing den., 452 U.S. 911 (1981); Consolidated Tribes and Bands of the Yakima Nation v. Whiteside, 617 F. Supp. 735 and 750 (E.D. Wa. 198), affirmed, 828 F.2d 1391 (9th Cir. 1988), cert. granted 108 S.Ct. 2843 (1988); Thomsen v. King County, 694 P.2d 40 (Wash. App. 1985).

Likewise, the circumstance that a particular unrestricted lot may be owned by an Alaska Native rather than a non-Native does not undermine the conclusion that the municipal government may exercise its full regulatory and enforcement powers with respect to all the unrestricted lots. Native owners may have acquired unrestricted title either directly from the Trustee under 43 CFR §§ 2564.6 and 2564.7, by removal of restrictions under 25 CFR Part 152, or by gift, purchase or inheritance from

1/ Attached hereto is a copy of a March 6, 1968 Memorandum by Juneau Area Realty Officer Charles H. Jones reciting in general terms the physical and legal history of the site presently occupied by the Juneau Indian Village, as well as a copy of the 1963 statute referred to therein.

a prior owner. Unrestricted lots in the Juneau Indian Village are neither part of a reservation nor "Indian country." As the Supreme Court observed in Mescalero Apache Tribe v. Jones:

Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the state.

411 U.S. 145 at 148 (1973). See also: Organized Village of Kake v. Egan, 369 U.S. 60, 75 (1962); and People of South Naknek v. Bristol Bay Borough, 466 F. Supp. 870, 875-876 (D. Alaska 1979).

II. Alaska Native Brotherhood Property

The map accompanying City-Borough Attorney Blasco's September 1, 1988 letter identifies the bulk of Block 3 of U.S. Survey 4694 with the designation "ANB," which presumably refers to the Alaska Native Brotherhood, an historic Alaska Native fraternal organization founded back in 1912. The organization's history, structure and purposes are described in some detail in Case, Alaska Natives and American Laws (University of Alaska Press 1984), at pages 405-409. Of critical significance is the fact that the ANB has never asserted a claim to "tribal" status and is not recognized as a "tribe" for purposes of federal Indian law. Id. Cf. Board of Equalization for Borough of Ketchikan v. Alaska Native Brotherhood and Sisterhood, Camp No. 14, 666 P.2d 1015 (Alaska 1983) (wherein ANB/ANS's lessee, asserting tribal immunity, was held not exempt from borough property taxes).

If ANB is in fact presently the owner of property in the Juneau Indian Village, it must have received that property by conveyance from individuals who were the original recipients of unrestricted deeds from the BLM Townsite Trustee. According to BLM records, no lots were originally applied for by ANB, and none were subsequently deeded by the Trustee to that organization. Several lots were apparently deeded in unrestricted status to individuals who were officers of ANB, but as to such unrestricted lots, the Trustee would have no record of a reconveyance to ANB or any other party. On the other hand, title to restricted lots could not have been transferred without BIA approval and further affirmative action by the Trustee. 43 CFR § 2564.5.

But whatever the extent of ANB's ownership interests in the Juneau Indian Village, it is certain that any such interests are held in unrestricted status. There is no provision in the law

for an association such as ANB to acquire a restricted title as an individual might, either directly from the Trustee, or by reconveyance from an Alaska Native holding restricted title. The 1926 Alaska Native Townsite Act, 44 Stat. 629, formerly codified at 43 U.S.C. §§ 733-736, authorized conveyance of restricted title only to an individual Indian or Eskimo occupant. Therefore, the conclusions set forth above with regard to the applicability and enforceability of relevant portions of the Juneau City and Borough Code to unrestricted townsite lots would also extend to any lands owned by ANB. Federal land law presents no impediment to across-the-board enforcement of otherwise applicable municipal ordinances.

As a footnote it might also be noted that the City and Borough Code can probably also be enforced in their entirety with respect to any property held by the Auke Tribal Council (Auke). The Townsite Trustee's records indicate that title to Block 1 of U.S. Survey 4694 was issued to Auke on September 22, 1971 in unrestricted status. There is therefore no title-related limitation upon enforcement of municipal law against Auke, owing to the nature of the land tenure itself.

However, this office is uncertain as to whether or not Auke claims to be a federally recognized Indian tribe, and on that basis to possess tribal sovereign immunity. We do note that Auke is not included in the much expanded list of "Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs," published at 53 Federal Register 52832 (December 29, 1988), pursuant to 25 CFR § 93.6(b). We are unaware of any other historical or legal support for any claim of sovereign tribal status which Auke might assert.

Moreover, even if Auke did have a colorable claim to tribal status, it is not clear that such status would insulate its activities on its Juneau Indian Village property from municipal regulation. In the relatively near future the Alaska Supreme Court will probably hand down a decision in City of Nome v. Nome Eskimo Community, Appeal Docket No. S-2651, a case in which an Indian Reorganization Act (IRA)-organized Native governmental entity is attempting to assert tribal immunity as a defense against imposition and collection of local property taxes. Like Auke's property, the land at issue in the Nome case is owned in fee simple status. Significantly, Nome Eskimo Community, although contesting its tax liability, has evidently acquiesced in application of other city ordinances of a regulatory nature to its activities on the disputed fee simple parcel.

III. Dedicated Streets

Although no direct reference to the streets surveyed as part of the Juneau Indian Village is made in City-Borough Attorney Blasco's letter, it is fairly obvious that enforcement of various of the municipal code provisions at issue would involve conduct occurring on the city streets. Perhaps it was assumed that the City and Borough have full enforcement powers with respect to activities occurring within the road rights-of-way. At any rate, our review of applicable law suggests nothing to the contrary.

The townsite survey of the Juneau Indian Village was originally authorized by the Act of May 29, 1963, Public Law 88-34, 77 Stat. 52, which simply stated as follows:

The Act of May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d, is hereby extended and made applicable to all lands of the Juneau Indian Village of Alaska, including uplands and filled in tidelands occupied on the date of this Act.

The 1926 Act in turn provided in relevant part as follows;

§ 2 Extension of street or alley across Indian or Eskimo land in Alaska; reservation of area.

Whenever the Secretary of the Interior shall determine that it would be to the interest of the Indian or Eskimo occupant of land described in section 733 of this title, he is authorized to extend the established streets and alleys of the town site upon and across the tract, and the deed issued to such occupant under said section shall reserve to the town site the area covered by such streets and alleys as extended.

Act of May 25, 1926, 44 Stat. 630, formerly codified as 43 CFR § 734, repealed by § 703 of the Federal Land Policy and Management Act (FLPMA) of 1976, 90 Stat. 2790. A glance at the survey plat makes it obvious that this statutory authority was in fact used to reserve the roads in the Juneau Indian Village.

Although we are unaware of any litigation specifically confirming such conclusion, it is our view that the City and Borough presently possess full administrative authority over--if not outright ownership of--the surveyed streets in the Juneau Indian Village. It would appear that the municipality acquired such authority by operation of law without necessity of any documents

of transfer being issued by the Townsite Trustee. A copy of a February 21, 1961 legal memorandum from this office, which so concludes, accompanies this memorandum.

Summarizing the legal authorities cited, that memo states that "... the right and title to such land is subject to disposition in the courts in accordance with applicable law." Old Alaska caselaw would appear to support recognition of the City and Borough's rights and authority. See Macintosh v. Town of Nome, 1 Alaska Reports 492, 496 (1902), and McCloskey v. Pacific Coast Co., 160 F. 794, 799 (1908), both relying upon Ashby v. Hall, 119 U.S. 526 (1886). These decisions all involved adjudication of conflicting public and private claims of ownership and control over townsite roads and walkways, and each was decided in favor of the public interest. Cf. State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633 P.2d 1378 (Alaska 1981), which held a mere paper "dedication" of a road on an unapproved and unrecorded subdivision plat did not in and of itself establish public ownership. That case is of course factually distinguishable from the situation with respect to the streets in the Juneau Indian Village.

In conclusion, it would appear that the combination of historic use and the recognition of the roads in the Townsite Trustee's survey of the Juneau Indian Village are together sufficient to establish public control over such roads, and that the Juneau City and Borough is the appropriate entity to exercise such control. Nothing in the 1926 Alaska Native Townsite Act is inconsistent with such conclusion. Nor does the circumstance that many of the individual privately owned townsite lots abutting those roads are held in restricted status in any way diminish the Municipality's state-delegated authority over operation and use of public rights-of-way. A.S. 29.35.010(10).

IV. Restricted Native Townsite Lots

A. General Discussion

The legal issues of greatest difficulty relate to the extent of municipal legislative or regulatory jurisdiction over use of restricted townsite lots, and the degree of control municipalities may properly exercise over activities conducted on such property. While the discussion which follows attempts in good faith to address these issues of concern, very few conclusions can be stated with absolute confidence. Given the unsettled nature of the law, especially as it applies to restricted Indian property outside reservation boundaries, we cannot guarantee that

an individual affected by City and Borough action--or inaction-- will not choose to judicially challenge the basis of the Municipality's exercise of police powers, or its election not to act in a particular situation.²

Having offered this disclaimer, we proceed to a review of the relevant statutes and decisional law. The more general discussion will be followed by brief comments on the specific City and Borough of Juneau Code provisions identified as candidates for enforcement in the September 1988 letter from legal counsel.

The starting point must be the 1926 Alaska Native Townsite Act itself, since it provides the most direct indication of Congressional intent as to the proper treatment of restricted property acquired by Native occupants. Section 1 of the Act, formerly codified at 43 U.S.C. § 733, provided as follows:

1. Indian or Eskimo lands in Alaska set aside on survey of town site; deeds; restrictions; fee simple title.

Where, upon the survey of a town site pursuant to section 732 of this title, and the regulations of the Department of the Interior under said section, a tract claimed and occupied by an Indian or Eskimo of full or mixed blood, native of Alaska, has been or may be set apart to such Indian or Eskimo, the townsite trustee is authorized to issue to him a deed therefore which shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior: Provided, That nothing herein contained shall subject such tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the patentee, or to any claims of adverse occupancy or law of prescription: Provided further, That the approval by the Secretary of the Interior of the sale by an Indian or Eskimo of a tract deeded to him under this section and

^{2/} We purposely emphasize the potential legal consequences of inaction as well as action lest municipal officials overlook the possibility of liability for failing to enforce their ordinances. For example, suppose an obvious fire hazard is left uncorrected because of concerns about the City's possession of enforcement authority over restricted townsite lots. If the owner or a neighbor later suffers a loss, could that party not seek to impose liability on the municipality on the theory that it did have jurisdiction and an obligation to act? Cf., e.g., Adams v. State, 555 P.2d 235 (Alaska 1976).

section 735 of this title shall vest in the purchaser a complete and unrestricted title from the date of such approval.

(emphasis added) 44 Stat. 629, repealed in 1976 in § 703 of FLPMA, 90 Stat. 2790. At least one reported court decision has given full effect to the somewhat indirectly-stated prohibition against taxation of restricted Native townsite lots. People of South Naknek v. Bristol Bay Borough, 466 F. Supp. 870, 874-875 (D. Alaska 1979). But otherwise, there is a dearth of caselaw specifically applying the provisions of the 1926 Native Townsite Act.

Since the statute is silent with respect to questions concerning possible regulatory authority and enforcement powers of the state and its political subdivisions, reference to more general principles cannot be avoided. However, two basic assumptions underlying this analysis merit special mention at the outset. First, it is assumed that there is no recognized Indian tribal governmental entity³ exercising governmental authority over the Juneau Indian Village. Secondly, it is assumed that the Juneau Indian Village has never been and is not now an Indian reservation. Unfortunately, even with these assumptions, conclusions are difficult to draw because so many of the available judicial precedents are at least arguably distinguishable precisely because they do involve active tribal governments and/or lands within Indian reservations.

1. Off-reservation Situs

In Organized Village of Kake v. Egan, 369 U.S. 60 (1962), the U.S. Supreme Court upheld the State of Alaska's right to enforce its law prohibiting the use of fish traps against the Organized Village of Kake and the Angoon Community Association, in the face of U.S. Department of the Interior regulations expressly permitting operation of the traps. One of the Court's conclusions was that there was no statutory authority for the Secretary of the Interior's issuance of the regulations at issue, a point to which we will return later. 369 U.S. 63.

But the other pertinent aspect of the decision was the extent to which it relied on the fact that the disputed fish

3/ This factor clearly distinguishes the situation in Juneau from that obtaining in most of the one hundred or so other Alaskan communities in which restricted Indian townsite lots may be found. Such an important distinction might well lead to different conclusions regarding the extent of municipal regulatory authority over land use in other communities.

traps were not located within the boundaries of an Indian reservation. Organized Village of Kake was decided as the companion case to Metlakatla Indian Community, Annette Island Reserve v. Egan, 369 U.S. 45 (1962), but the two otherwise similar cases were decided differently primarily on the basis that one involved off-reservation activity and the other an attempt at state enforcement of its fish trap ban within reservation boundaries. Summarizing past decisions, the Supreme Court made the following statement:

These decisions indicate that even on reservations state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by federal law. Congress has gone even further with respect to Alaska reservations, 72 Stat 545, 18 USC § 1162, 28 USC § 1360.⁴ State authority over Indians is yet more extensive over activities, such as in this case, not on any reservation.

Organized Village of Kake v. Egan, supra, 369 U.S. at 75. Given the situs of the disputed fish traps outside any reservation, the Court went on to conclude that the State prohibition of Kake's and Angoon's use of fishtraps

... does not impinge on any treaty-protected reservation self-government, the factor found decisive in Williams v. Lee [358 U.S. 217 (1959)]. Nor have appellants any fishing rights derived from federal laws.

Id. at 76. While the state regulation of conduct upheld in Organized Village of Kake did not involve land use, it does serve to emphasize the wide scope of state authority outside a reservation.

2. Federal Preemption

Given the assumption that no operative tribal government exercises governmental authority over the Juneau Indian Village, we can dispense with an inquiry as to whether contemplated

^{4/} However, how much the statutory citation in the quoted passage adds with reference to Alaska is in doubt in the wake of the Court's later decision in Bryan v. Itasca County, 426 U.S. 373 (1976), wherein it was held that Congress had not extended complete legislative (as opposed to judicial) jurisdiction over Indian lands to so-called "Public Law 280" states by passage of that 1953 statute.

municipal actions might infringe upon tribal self-government, or interfere with the Native people's right to be governed by their own laws. Accordingly, we next proceed to examine the question as to whether other federal laws may constitute a legal barrier to an exercise of municipal regulatory jurisdiction over restricted townsite lots. In fact, this mode of analysis, commonly referred to as an application of the doctrine of federal preemption, has evolved into the dominant judicial tool for determining the extent of State regulatory authority over Indian lands. New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 332 (1983); White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980). As described in one recent Ninth Circuit Court of Appeals decision,

"... The trend has been to rely more on federal preemption, using notions of tribal self-government as a 'backdrop' against which any assertion of state authority must be assessed."

Segundo v. City of Rancho Mirage, 813 F.2d 1387, 1390 (9th Cir. 1987). See generally: F. Cohen, Handbook of Federal Indian Law (1982 ed.), Ch. 5, Sect. B at 270-279 (hereafter cited as "Cohen").

In fact, some commentators have discerned in the most recent Supreme Court decisions a trend towards employment of a balancing approach involving a weighing of the relative importance of state, federal, and tribal interests. Such an approach suggests that a greater value is being assigned to state interests than was previously the case. See, e.g. "Note--Indian Sovereignty: Confusion Prevails," 62 Washington L. Rev. 169, 174 (1988), discussing, inter alia, California v. Cabazon Band of Mission Indians, U.S. (1987), Rice v. Rehner, 463 U.S. 713 (1983), and Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980). See also Canby, The Status of Indian Tribes in American Law Today, 62 Washington L. Rev. 1, 12 (1987). While the cited decisions are not directly applicable to the facts of the present case, the trend towards increasing judicial solicitude for state interests, and greater judicial tolerance of assertions of state authority, should not be overlooked as we conduct our preemption analysis.

There are three federal statutes which must be examined to determine whether or not Congress has expressed an intent to preclude state substantive regulation of the use of restricted Alaska Native townsite lots such as those located in the Juneau Indian Village. The first, already touched on briefly, is the 1926 Alaska Native Townsite Act itself. The second is Public Law

83-280, codified in pertinent part as 28 U.S.C. § 1360 and 18 U.S.C. § 1162. And the third statute, which actually appears to extend certain authority to the state rather than prohibiting or precluding its exercise, is found at 25 U.S.C. § 231, 45 Stat. 1185. In addition to general consideration of these three statutes, it is necessary to address the applicability of the Interior Department regulation codified at 25 CFR § 1.4, since it appears on its face to constitute a conscious attempt to preempt exercise of state land use regulation authority over Indian property subject to restrictions on alienation.

(a) Native Townsite Act

As stated previously, there is very little caselaw interpreting the statutory language codified at 43 U.S.C. § 733 (1970). However, the analytic approach employed in the one federal district court decision interpreting the Native Townsite Act is worth examining. In People of South Naknek v. Bristol Bay Borough, supra, the Court concluded

"... that the presumption of no state regulatory or tax jurisdiction does not arise off-reservation."

466 F. Supp. at 878. In support of that statement the district court went on to quote at length from Mescalero Apache Tribe v. Jones, 411 U.S. 145, at 148-149 (1973), including the Supreme Court's observation that

"Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens."

Id. On the basis of this legal analysis, the District Court held that the Bristol Bay Borough's personal property tax could be imposed upon the personal property of restricted townsite lot owners even if that personal property was held and used exclusively on their restricted townsite lot properties. People of South Naknek v. Bristol Bay Borough, supra, 466 F. Supp. at 879. Although the court's reference to regulatory jurisdiction was dicta in that case, which dealt primarily with the power to tax, there is no clearcut distinction to be drawn between those categories of state power on the basis of the language of the 1926 Native Townsite Act. If anything, the language of the Act provides a stronger basis for arguing exemption from taxation than from regulation. Therefore, it seems likely that the District Court, if presented with the question, would have upheld state regulatory authority over the activities of an Alaska Native

restricted townsite lot owner, including those conducted on his restricted townsite lot, so long as any such regulation was not otherwise preempted by federal law.

Three years earlier, in a widely-noted but unreported decision featuring an exhaustive review of the 1926 Alaska Native Townsite Act and its legislative history, another Alaska Federal District Court judge found in that legislative history a congressional purpose to treat Alaska Native townsites entered under the 1926 Act differently than other federal townsites only to a very limited degree:

Thus, the legislative history of the Act of May 25, 1926, establishes that the 1926 legislation was enacted to supplement the 1891 Act and thereby extend its benefits to non-citizen Alaska Natives.

The trustee deeds that such Natives received were restricted as to alienation and were exempted from the assessment of fees and costs. These two departures from the Act of March 3, 1891, were contained in the express provisions of the 1926 Act. It appears that these limitations were the only substantial differences in townsite law that Congress intended for Native possessions.

(emphasis added) City of Klawock v. Gustafson, Case No. K-74-2 (U.S. District Court for Alaska decision of Nov. 11, 1976 at p. 14). While the issue of state regulatory authority over restricted townsite lots was not directly at issue in City of Klawock v. Gustafson, the Court's analysis of the legislative history of the 1926 Act in that case is entirely consistent with the conclusion that the statute expressed no congressional intent to preclude state or municipal exercise of regulatory jurisdiction over restricted townsite lots.

(b) Public Law 280

In 1953, primarily in response to the perceived inadequacy of criminal law enforcement on some Indian reservations, Congress enacted a statute still commonly referred to as Public Law 280. Act of August 15, 1953. 67 Stat. 589. It granted various named states criminal jurisdiction over some or all of the "Indian country" within their borders. See generally Bryan v. Itasca County, 426 U.S. 373, 379-380 (1976), describing the purpose of § 2, codified as 18 U.S.C. § 1162. However, for present purposes, our primary interest is in §§ 4(a) and (b) of the statute, codified at 28 U.S.C. § 1360:

§ 1360. State civil jurisdiction in actions to which
Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

* * * *

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

For over two decades after enactment of this statute, it was believed by some that 28 U.S.C. § 1360(a) had extended state regulatory and/or legislative jurisdiction into Indian country, rather than merely providing for a state judicial forum for resolution of civil disputes. However, the decision in Bryan v. Itasca County unequivocally established that adjudicative jurisdiction was the only aspect of civil jurisdiction that was ceded to the states in Public Law 280. 426 U.S. at 375. Thus, to the extent that restricted townsite lots are considered "Indian Country,"⁵ the regulatory authority of the state or its political

^{5/} The statutory definition of Indian country, found in 18 U.S.C. § 1151, has generally been applied by the Courts in civil as well as criminal contexts. See generally Cohen, supra, at 27, citing De Coteau v. District County Court, 420 U.S. 425, 427, n.2 (1975). The statute sets out the following definition:

subdivisions is not broadened by 28 U.S.C. § 1360(a).

That observation shifts our focus to 28 U.S.C. § 1360(b) and returns us to the question as to whether or not its enactment constitutes a federal preemption of state regulatory jurisdiction. On its face it appears to be an expression of a legislative intent not to change existing law in certain respects, rather than an effort to alter the then-prevailing jurisdictional status quo. And indeed, this is the view adopted by the Supreme Court in Bryan v. Itasca County, supra, 426 U.S. at 391:

"We agree ... that § 4(b) 'is entirely consistent with, and in effect a reaffirmation of the law as it stood prior to its enactment.'"

The view of P.L. 280 was also shared by Chief Judge von der Heydt in People of South Naknek v. Bristol Bay Borough, supra,

(footnote continued from previous page).

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders [sic] of the United States whether with the original or subsequently acquired territory thereof, and whether with or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

But whether the Juneau Indian Village might be a "dependent Indian community," or whether individual restricted lots might be considered for jurisdictional purposes the equivalent of allotments need not be decided for present purposes. We do note that the existence and/or extent of Indian country in Alaska is still a matter of considerable controversy. Fortunately, resolving that issue is not essential to the problem before us because even if the individual lots are Indian country it may be concluded that state or local land use regulation has not been federally preempted. Like the court in People of South Naknek v. Bristol Bay Borough, we can simply sidestep the question by focussing on the essential fact that the Juneau Indian Village is not within Indian reservation boundaries. 466 F. Supp. 870 at 877.

466 F. Supp. at 879 ("Public Law 280 was [not] intended ... as a prohibition on exercising jurisdiction the state would otherwise possess."). Nonetheless, the courts addressing issues of state and local tax and regulatory jurisdiction over restricted property in Public Law 280 states have devoted considerable effort to interpretation of 28 U.S.C. § 1360(b). The provision consists of three clauses, disclaiming, respectively, an intent to authorize: (1) alienation, encumbrance, or taxation of trust or restricted property; (2) regulation of the use of such property inconsistent with federal law; and (3) state court adjudication of the ownership or right of possession of such property. The latter issue has caused the courts relatively little difficulty, with reported decisions uniformly recognizing and giving broad effect to the express jurisdictional limitation. E.g.: Ahboah v. Housing Authority of Kiowa Tribe, 660 p.2d 625 (Okla. 1983); Heffle v. State, 633 P.2d 264, (Alaska 1977).

The middle clause of 28 U.S.C. 1360(b), which disclaims any purpose to extend state regulatory authority over land use, while certainly germane to the issues at hand, does no more than restate the basic principle of federal preemption. Any state regulation of the use of trust or restricted property which is "... inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto" was invalid both before and after the 1953 adoption of that statutory language.

The phrase that has presented the greatest difficulty has been the statutory disclaimer of a purpose to authorize "alienation, encumbrance, or taxation" of trust or restricted property. In particular, the difficulties have been encountered with interpretation of the term "encumbrance." In an important sense this issue gets to the heart of the question of the validity of state land use regulation. The leading case, still binding on the federal courts in this jurisdiction is Santa Rosa Band of Indians v. Kings County, 532 F.2d 6555 (9th Cir. 1965). Although a significant portion of the Santa Rosa decision is arguably rendered inapposite because we are not in the Juneau Indian Village situation dealing with an Indian reservation, the court's summary of the "encumbrance" issue remains essentially an accurate one:

The word "encumbrance" is of course ambiguous, and courts have split on whether or not it evidences an intent to exempt trust lands from state zoning and land use regulations. Compare Snohomish County v. Seattle Disposal Co., 70 Wash.2d 668, 425 P.2d 22 (1967), cert. denied, 389 U.S. 1016, 88 S.Ct. 585, 19 L.Ed.2d 662 (1967) (Douglas and White JJ., dissenting) with Rincon Band, supra, and Agua Caliente Band

of Mission Indians' Tribal Council v. City of Palm Springs, 347 F. Supp. 42 (C. D. Cal. 1972), vacated and remanded by this court in an unpublished order, January 24, 1975. [citations omitted]. Relying on the canon of construction applied in favor of Indians, the Court has ruled in different contexts that the word "encumbrance" is to be broadly construed and is not limited to a burden which hinders alienation of the fee, [citations omitted] rather focussing on the effect the challenged state action would have on the value, use and enjoyment of the land. [citations omitted] Following the Court's lead, and resolving, as we must, doubts in favor of the Indians, we think that the word as used here may reasonably be interpreted to deny the state the power to apply zoning regulations to trust property.

However, it should be kept in mind that the Santa Rosa holding is not necessarily binding on a state court, which would remain free to adopt the narrower land title-related interpretation of the term "encumbrance." The argument for the narrower interpretation is well-expressed in the dissenting opinion of Judge Hale in Snohomish County v. Seattle Disposal Company, 425 P.2d 22, 27-29 (Wash. 1967), cert. denied 389 U.S. 1016, as well as the opinion of U.S. Supreme Court Justices Douglas and White, dissenting from the Supreme Court's refusal to review the Snohomish County case. To the same effect are: Agua Caliente Band v. City of Palm Springs, 347 F. Supp. 42 (C. D. Cal. 1972); Rincon Band of Mission Indians v. County of San Diego, 324 F. Supp. 37 (S.D. Cal. 1971) rev'd on other grounds, 495 F.2d 1 (9th Cir. 1974), cert. den. 419 U.S. 1008 (1974); and People v. Rhoades, 90 Cal. Rptr. 794 (Cal. App. 1970). According to this view, zoning ordinances, building codes, sewage and refuse collection ordinances and the like, while they restrict an owner's unregulated enjoyment of his property, are valid exercises of governmental "police power," properly exercisable in pursuit of the public health, safety and welfare. As expressed in dissent by Washington Supreme Court Justice Hale:

... The term "encumbrance" should be given its more definitive and precise meaning--one denoting a burden on the land and affecting the title thereto or one impairing the power of alienation such as a mortgage, lien, easement, lease, or other disability to fee ownership.

Snohomish County v. Seattle Disposal Co., supra, 425 P.2d at 28. Thus, while it is not presently the prevailing view of the Ninth

Circuit, there is considerable judicial support for a narrow view as to what sorts of state or local land use regulations might constitute an "encumbrance" of restricted Indian real property within the meaning of P.L. 280.

Through all of this it must be remembered that the initial Public Law 280 language was a disclaimer of congressional intent by enactment of that statute to delegate new authority to state governments. It was not an affirmative prohibition of the exercise of such authority on independent grounds. This point recalls to mind the significance of Organized Village of Kake v. Egan, supra, with its unequivocal recognition of "yet more extensive" state authority over off-reservation activities of Indians. A case exemplifying the approach that begins with the assumption that the State already has authority to regulate off-reservation land use, and then inquires as to whether such authority was preempted by P.L. 280, is Norvell v. Sangre de Cristo Development, 372 F. Supp. 348, 353 (D. N. M. 1974). In that case the court did not find in P.L. 280 itself an intent to preempt or oust state authority to enforce building code, zoning and subdivision ordinances, liquor regulation or water quality standards.

In summary, § 4(a) of P.L. 280, 28 U.S.C. § 1360(a) has clearly been held not to have expanded state or local regulatory jurisdiction, but Congress' disclaimer in § 1360(b) of an intent to authorize "encumbrances" of trust or restricted is probably better viewed as an expression of an intent to maintain the status quo with respect to the extent of state authority, rather than as an attempt to diminish pre-existing state authority. The analysis should therefore focus on an inquiry as to the existence of an independent basis, statutory or otherwise, for concluding that state authority has been preempted by federal law.

(c) 25 CFR § 1.4

No informed assessment of the extent of state or local legislative or regulatory jurisdiction over off-reservation restricted Indian land can be made without taking into account the effect of 25 CFR § 1.4. Indeed, when the Juneau Area Director issued his May 24, 1983 "Policy Statement," the regulation was probably the primary legal authority on which his position was based. A copy of that statement accompanies this memorandum. 25 CFR § 1.4 provides as follows:

§ 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

Upon cursory review, this regulation might be read as constituting a blanket prohibition of almost all forms of regulation the City and Borough of Juneau might wish to impose with respect to restricted property in the Juneau Indian Village. Moreover, 25 CFR § 1.4 appears clearly to fall within the coverage of Public Law 280 language disclaiming any purpose to authorize:

"... a regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement or statute or with any regulation made pursuant thereto." (emphasis added).

28 U.S.C. § 1360(b).

In short, an uncritical reading of 25 CFR § 1.4 might foster the belief that it has the effect of preempting application to restricted Indian lands of any land use regulations of the state or its political subdivisions. However, upon closer examination, the preemptive effect of the regulation appears to be far from certain for two basic reasons. First, there is doubt about the breadth of its applicability, and secondly, there is doubt about its validity as an exercise of administrative authority.

An interpretation of the scope of the regulation's coverage is aided by a review of its history. The original impetus for its adoption was in response to conflicts which arose in the early 1960's between Agua Caliente Indian Reservation Indian land owners, and tribal officials on the one hand, and officials of the City of Palm Springs, California, on the other. The Agua Caliente Reservation, established in the late 1800's, was laid out in a checkerboard pattern of alternate sections of land, which territory was then allotted to individual tribal members. See Act of January 12, 1891, 26 Stat. 712, and 25 U.S.C. § 751 et seq. Many years later the City of Palm Springs was incorporated, and part of the reservation was included within its boundaries. Beginning in 1961 the City adopted a zoning ordinance and plan which it then sought to apply to the allotted and unallotted reservation lands within its boundaries. The Tribe resisted the City's assertion of regulatory jurisdiction and filed suit.

The Department of the Interior's promulgation of 25 CFR § 1.4, prompted by this jurisdictional dispute, was in part an effort to restate existing law (subsection (a)) and in part, an effort to establish a method for reconciling state, federal and tribal interests in land use regulation (subsection (b)). The notice of proposed regulation contained the following statement:

The purpose of this addition is two-fold. First, it will enunciate and particularize in regulatory form for the benefit and guidance of those concerned the sense of existing law under which laws, ordinances, codes, resolutions, rules or other regulations of a State or its political subdivisions limiting, zoning or otherwise governing, regulating or controlling the use or development of property are inapplicable to trust or restricted Indian property held or used under a lease or other agreement. Second, it will provide for the adoption and action by the Secretary in specific cases, after consultation with the Indian owner, of all or part of any laws enacted by a State or any of its political subdivisions.

regulating the use of property, which would otherwise be inapplicable.

30 Fed. Reg. 6438 (May 4, 1965).

Just a month later the final rule was adopted, effective on the date of publication, with the following published explanation:

Because there are immediate cases of conflict between the attempts of State and local governments to enforce zoning ordinances, building codes and similarly regulatory laws on the one hand and the provisions of leases and other agreements under which trust or restricted Indian property is being used on the other, it has been determined to be in the best interests of the Indians and the public to resolve those conflicts as quickly as possible. Therefore, the new section shall become effective on the date of this publication in the FEDERAL REGISTER.

30 Fed. Reg. 7520 (June 7, 1965).

As promised, the Secretary of the Interior then moved quickly to adopt certain state and local ordinances as federal law applicable to leased Indian lands. Less than three weeks after the regulation became effective the Secretary did "adopt and make applicable" to leased Agua Caliente lands within the Palm Springs city limits most of the state and local laws and ordinances regulating land use and development. 30 F.R. 8172 (June 25, 1965). Not too long after that, state, but not local, law was made applicable to all trust and restricted Indian property leased or held under agreement from tribes or individual owners throughout the State of California. 30 Fed. Reg. 8722. So far as we are aware, no similar action has ever been taken by the Secretary of the Interior with respect to Indian-owned restricted 1926 Townsite Act lots in the City and Borough of Juneau, or anywhere else in the State of Alaska for that matter.

Unfortunately, promulgation of 25 CFR § 1.4, intended in part to "enunciate and particularize in regulatory form for the benefit and guidance of those concerned the sense of existing law," probably served to amplify rather than to eliminate the jurisdictional confusion. Attempts to rely upon 25 CFR § 1.4 as a bar to enforcement of state or local laws have often been met with a challenge to the regulation's validity, based on the argument that the Secretary of the Interior lacked statutory authority to issue such a regulation in the first place. The

Interior Department was evidently aware of such doubts from the outset, and its limitation of the effect of the regulation to leased lands was presumably occasioned by the existence of a statute, 25 U.S.C. § 415, granting the Department broad discretionary authority over the terms and conditions of leases of trusted and restricted Indian lands. However, it would appear that the limitation on the applicability of the regulation to leased Indian lands has often been overlooked, perhaps in part because the subsection (a) phrase "...and belonging to any Indian" has been carelessly misread as "...or belonging to any Indian," and partly because limitation of its coverage to leased lands is not explicitly reiterated in subsection (b). Nonetheless, the Interior Department remains quite sensitive to the limited scope of the regulation, as reflected in the analysis set forth by the Associate Solicitor Indian Affairs in his March 24, 1982 Memorandum to the Assistant Secretary for Indian Affairs:

... this regulation has come under considerable attack in the past as lacking statutory authorization. The Ninth Circuit Court of Appeals held, in Santa Rosa Band v. Kings County, 532 F.2d 655 (9th Cir. 1975), that § 1.4(a) was valid but specifically declined to rule on the validity of § 1.4(b), the subsection authorizing the Secretary to adopt state and local ordinances. 532 F.2d at 666, n.18. While the Secretary's adoption of state and local laws for application to leased land might well be held to be within the Secretary's authority under 25 U.S.C. § 415, no statute vests the Secretary with similar authority over unleased Indian land, and I therefore doubt that a court would uphold such an action of the Secretary as to Indian land not under lease.

A copy of this 1982 Associate Solicitor's Memorandum, as well as a prior one dealing with the same subject matter, are attached hereto.

As the above-quoted analysis suggests, some courts which have considered the question have specifically ruled that 25 CFR § 1.4 was invalid and unenforceable on the basis that its promulgation exceeded the legal authority of the Secretary of Interior: e.g. Norvell v. Sangre de Cristo Development Co., Inc., supra, 372 F. Supp. at 357 (decided without reference to the last sentence⁶ of 25 U.S.C. § 415(a), added by amendment in 1970, P.L. 91-275). In Norvell, the District Court ruled that the

^{6/} The general language of 25 U.S.C. § 415, under which the Secretary of Interior was authorized to prescribe lease terms

regulation could not be upheld as an implementation of 25 U.S.C. § 415(a), Public Law 280, or any other Statute. See also, Rincon Band of Missions Indians v. County of San Diego, 324 F. Supp. (S. D. Cal. 1971).

However, as noted previously, the leading federal case in the Ninth Circuit adopts a contrary view. The decision in Santa Rosa Band of Indians v. Kings County, supra, expressly declining to follow Norvell or Rincon Band, holds that 25 CFR § 1.4 is valid. 532 F.2d at 665. Remarkably enough, the court in Santa Rosa ignores the limitation of the coverage of § 1.4 to leased lands, and upholds it as an exercise of the Secretary's rule-making authority in the factual context before the Court under authority of 25 U.S.C. § 465, the provision of the Indian Reorganization Act (IRA) of 1934 authorizing the Secretary to acquire lands for Indians. The Santa Rosa case involved an attempt by a county to enforce its zoning ordinances within the boundaries of a rancheria, title to which had been obtained by the United States in trust for the tribe pursuant to 25 U.S. § 465. In upholding the validity of the regulation as an implementation of 25 U.S.C. § 465, the Ninth Circuit left open the question of its application to lands not acquired pursuant to that statute, or in other factual contexts, but noted that it might be sustainable under 25 U.S.C. § 2 alone. 532 F.2d 666, notes 19, 20. Section 2 vests the BIA with authority to manage Indian Affairs, and all matters arising out of Indian relations. Its employment as authority to support executive branch law-making seems a dubious exercise.

(footnote continued from previous page)
and conditions, was amplified by addition of the following sentence as a result of the 1970 enactment of Public Law 91-275, 84 Stat. 303:

"Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject."

Of course, the Santa Rosa holding also rested on the alternative ground that the challenged zoning ordinance was an "encumbrance" violative of the disclaimer accompanying the jurisdictional grant in P.L. 280, 28 U.S.C. § 1360(b). Id. at 668. As noted previously, that view of the intended effect of § 1360(b) may attribute to Congress an affirmative law-making purpose which finds little support in the statutory language. In United States v. County of Humboldt, 615 F.2d 1260 (9th Cir. 1980), the Ninth Circuit Court of Appeals refused to overturn its ruling in the Santa Rosa case, and again concluded that a California county lacked jurisdiction to enforce its zoning ordinances and building codes on an Indian reservation. The Court found support for its position in the Supreme Court's then-recent decision in Bryan v. Itasca County, supra, wherein it had been held that P.L. 280 did not confer on states the authority to tax personal property on trust lands within a reservation. Humboldt, supra, at 1261. Since the Humboldt case dealt with reservation land, the Ninth Circuit again assumed that the state had no prior regulatory jurisdiction, and then focussed on the question as to whether or not P.L. 280 had constituted a delegation to the state or county of new or additional authority to enforce its laws on the reservation. In this important respect, of course, both Santa Rosa and Humboldt are distinguishable from the present case, which deals with non-reservation lands.

As regards the validity of 25 CFR § 1.4 or its applicability to restricted townsite lots in the Juneau Indian Village, we have seen first that the Solicitor's Office interprets the regulations' scope narrowly, as extending only to leased lands. This interpretation clearly comports with both the plain meaning and the history of the regulation and is, of course, entitled to considerable deference. Since the Santa Rosa decision did not refer to this important limitation on the scope of 25 CFR § 1.4's applicability, we can only speculate that such oversight may be accounted for by the fact that the United States was not a party, and that neither of the litigants raised the issue.

The much more recent Ninth Circuit decision in Segundo v. City of Rancho Mirage, 813 F.2d 1387 (9th Cir. 1987) did apply 25 CFR § 1.4 in the context of an attempt by a political subdivision of a state to enforce ordinances relating specifically to leased property. In Segundo, the validity of 25 CFR § 1.4 was evidently not questioned, but if it had been would probably have been upheld under authority of 25 U.S.C. § 415. The regulation, along with the leasing statute and 25 CFR Part 162 were collectively relied upon in support of a holding that the application of the city ordinance at issue was preempted by federal law. Id. at

1392-1393. However, like the Santa Rosa and Humboldt cases, Segundo may be distinguished insofar as it dealt with reservation lands, and a possible infringement of an Indian tribe's sovereignty.

Among other things, Attorney Blasco's letter asks what responsibility the BIA may have to deal with health and safety concerns related to conditions in the Juneau Indian Village. 25 CFR § 1.4(b) authorizes the Bureau to adopt or make applicable to restricted townsite lots leased from, or used under agreement with, their Indian owners, all or any part of state or local law limiting zoning, or otherwise regulating land use. Taking such an action may well be an option available to the BIA, but as a practical matter it would not go very far towards solving the existing problems, because it would not affect owner-occupied or abandoned properties. Other limitations of this approach are highlighted in the Associate Solicitor's March 24, 1982 Memorandum. As noted therein, adoption of Juneau code provisions as federal law would possibly clarify their applicability to leased restricted townsite lots, but would not clothe the city with any additional enforcement powers. Because we assume that most of the land in the Indian Village is not under lease, BIA action pursuant to 25 CFR § 1.4 may accomplish little if anything. Still, it is the only obvious step available to the BIA in addressing the problem. Absent a situation involving alienation of an interest in the property, the BIA possesses no general supervisory or management authority over restricted townsite lots, and exercises no control over such property or the uses to which its owners may elect to put it.

(d) 25 U.S.C. § 231

The last federal statute which we must consider in this analysis is 25 U.S.C. § 231:

**Enforcement of State laws affecting
health and education; entry of State
employees on Indian lands**

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco

parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.

45 Stat. 1185, 60 Stat. 962 The obvious relevance of 25 U.S.C. § 231 to the situation in the Juneau Indian Village would be as a possible federal authorization of municipal inspection or enforcement activity with respect to health, sanitation and school attendance. Unfortunately, there have been very few reported cases decided on the basis of this statute, even though it has been on the books for sixty years. Moreover, those cases which do discuss the statute leave open a number of questions pertinent to determining its possible applicability in the Juneau context.

A strictly literal reading of 25 U.S.C. § 231 would suggest it has no application to restricted townsite lots, since they are not "...Indian tribal lands, reservations, or allotments therein," but in at least one other context the laws applicable to allotments have been interpreted as applying to townsite lots as well. Carlo v. Gustafson, 5121 F. Supp. 833, 836 (D. Alaska 1981) (court has jurisdiction to hear suit involving right to restricted townsite lot under 25 U.S.C. § 345 and 28 U.S.C. § 1353).

Even assuming that a restricted Alaska Native townsite lot is an allotment, the statute might not apply because no reservation is involved, and the grant of authority to the State relates to "...Indian tribal lands, reservations, or allotments therein" (emphasis added). However, logically, the absence of any tribal jurisdiction, infringement upon which § 231 might be deemed to authorize, probably makes a fairly strong case for the existence of State or local authority, even if it were deemed to render the statute itself technically inapposite.

Another unresolved question with respect to § 231 is whether it should be regarded as self-implementing, or whether its implementation depends on affirmative action by the Secretary of the Interior to "permit" State enforcement activity. According to the latest edition of Cohen's Handbook of Federal Indian Law, supra:

Although the statute says that the Secretary "shall" permit state inspection and enforcement, the longstanding position of the Interior Department is that the statute does not compel the Secretary to

allow state inspection or enforcement. Thus the statute authorizes only those state activities allowed by secretarial regulations.

Id. at 377. There are currently no regulations in effect with respect to health and sanitation, since those adopted in 1940, formerly codified at 25 CFR § 84.78, were revoked in 1955 in connection with the transfer of Indian health functions to the Public Health Service. The prior regulation required an opportunity for tribal and individual Indian comment before the Secretary of the Interior would approve for state enforcement of any specific state health and sanitation regulations. It also stated that no state law conflicting with a tribal ordinance or resolution could be applied within the tribe's territorial jurisdiction, thereby reflecting the then-prevailing policy of deference to tribal authority. See text of regulation, and discussion in Solicitor's Opinion, M-36768 (February 7, 1969), 2 Op. Sol. on Indian Affairs 1986 (U.S.D.I. 1979).

As noted, the Interior Department has not issued any new regulations since 1955, even though it has evidently taken the position that adoption of regulations under 25 U.S.C. § 231 is a prerequisite to exercise of state authority, and even though it could be argued that such a duty is mandatory under the statutory language. On the other hand, the relatively few court decisions which have made reference to § 231 have viewed it as indicative of congressional intent to allow some state activity, even in the absence of Interior Department action. In Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965) the Supreme Court noted that "certain state laws have been permitted to apply on reservations," citing, inter alia, 25 U.S.C. § 231. Id. at 687 n.3. A similar reference to the statute had been made earlier in Organized Village of Kake v. Egan, supra, 369 U.S. at 73. These decisions make no reference to the issue as to whether or not Interior Department action is a prerequisite to state action under § 231.

The other Supreme Court reference to § 231 was in Justice Douglas' dissent from the Court's denial of certiorari in Snohomish County v. Seattle Disposal Co., 389 U.S. 1016, 1019 (1967). The case dealt with the State's power to require a non-Indian lessee of allotment land to obtain a county permit prior to operating a refuse disposal site, and Justice Douglas, joined by Justice White, suggested that state regulation of pollution-generating activities which impact adjacent non-Indian lands was permissible under the language and intent of § 231. Unlike the Santa Rosa case, dealing with P.L. 280, the 25 U.S.C. § 231 cases

do not treat the distinction between the state and its political subdivision as a significant one.

Other decisions addressing Section 231 include Confederated Bands and Tribes of the Yakima Indian Nation v. Washington, 550 F.2d 443 (9th Cir. 1977) and Thomsen v. Kings County, 694 P.2d 40 (Wash. App. 1985). In the Yakima case the Ninth Circuit found in § 231 evidence of a congressional intent to allow the states to deal with the particular subject matter areas identified, and noted that such provision was not repealed at the time of P.L. 280's passage. 550 F.2d 446-447, n.8. Of course, that analysis predated the Supreme Court's narrow construction of P.L. 280 in Bryan v. Itasca County, *supra*, but the Ninth Circuit's observation about the apparent intent of § 231 is not directly undercut by the Bryan decision.

In general, the courts seem to recognize that 25 U.S.C. § 231 opens the door to enforcement of state health and sanitation regulations even within reservation boundaries, but none of the decisions noted seem to have been decided squarely on that basis.⁸ Thomsen v. King County, probably comes as close as any other reported decision to turning on the interpretation of § 231, but it instead bases its holding on the fact that the individuals living on fee land within the reservation, against whom the County sought to enforce its health board regulations, were non-Indians. 694 P.2d at 44-46.

In conclusion, it must be recognized that the extent to which state regulatory jurisdiction over health and sanitation matters in Indian country can properly be exercised under authority of 25 U.S.C. § 231, or otherwise, is still an open question. However, in addressing the problems existing in

7/ E.g.: Thomsen v. King County, 694 P.2d 40, 44-45 (Wash. App. 1985); Snohomish v. Seattle Disposal Co., *supra*, 425 P.2d 22, (both dealing with regulation of activities of non-Indians on trust and restricted lands, and both decided under a Washington statute requiring local officials to enforce state health regulations). Compare: Santa Rosa Band of Indians v. Kings County, *supra*, 532 F.2d 655, 659-664, (rejecting an argument that county ordinances as well as state laws are "civil laws ... of general applicability" within the meaning of 28 U.S.C. § 1360(b)).

8/ Additional decisions are cited in a January 23, 1985 Alaska Attorney General's Office Memorandum at page 9. Attached hereto is a copy of that memo, which addresses in broad terms many of the issues discussed in this memorandum.

the Juneau Indian Village, the likelihood that the municipal government's exercise of regulatory authority with respect to health and sanitation could withstand a judicial challenge is at least marginally enhanced by the existence and apparent purpose of 25 U.S.C. § 231.

B. Codes of the City and Borough of Juneau

City-Borough Attorney Blasco's September 1988 letter identifies five major codes which the municipality is interested in enforcing in the Juneau Indian village. Copies of those codes were not furnished for our review, but time and space limitations would preclude their detailed review in any event. However, we would note that as a general proposition justification for enforcement of the traffic and penal codes should present relatively little difficulty. The traffic code would presumably deal almost exclusively with individual conduct unrelated to restricted townsite property, and would also be enforced primarily in the dedicated public streets over which municipal jurisdiction seems relatively certain.

Likewise, the penal code, or at least major portions of it, can probably be enforced with confidence against individual owners, residents, or transient occupants of lots in the Indian Village without regard to the restricted status of the property where the criminal conduct might be occurring. Subsection (a) 18 U.S.C. § 1162, also enacted in 1953 as part of P.L. 280, provides in pertinent part as follows:

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State, except that on Annette

Islands; the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.

Subsection (b) is identical to 28 U.S.C. § 1360(b), disclaiming any intent to authorize alienation, encumbrance or taxation of Indian property, including presumably restricted Alaska Native Townsite Act lots.

Given the fact that the original impetus for enactment of P.L. 280 was the perceived inadequacy of criminal law enforcement on Indian reservations, it is not surprising that the extent of authority over criminal law enforcement given to Alaska and the other states named in the statute was considerably greater and less ambiguously expressed than was the case with respect to civil jurisdiction. This legislative history was authoritatively described in Bryan v. Itasca County, 426 U.S. 373, 379-380 (1976), but decisions affirming the applicability of state criminal law both precede and follow that decision.

One problem which frequently arises in applying the law is the necessity for a determination as to which laws are criminal, and which ones merely regulatory. It was not intended that state and local governments could convert the latter into the former simply by imposing criminal penalties for violations of what are essentially regulatory laws. In California v. Cabazon Band of Indians, 480 U.S. 202 (1987), the Supreme Court affirmed the Ninth Circuit Court of Appeals conclusion that a state law which would otherwise have outlawed a tribal bingo game conducted on a reservation could not be enforced under P.L. 280, based on the observation that state law did not prohibit all bingo games, but instead specified conditions under which they could be lawfully run. Restating a prior holding by the Court of Appeals, the Supreme Court in Cabazon described the test thusly:

"... a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and

Pub L 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy."

480 U.S. at 209. Of course, provisions of the City and Borough codes which cannot pass muster as criminal/prohibitory in nature may still be enforceable under more general civil jurisdictional principles already discussed.

The Cabazon case addressed the question of a P.L. 280 State's authority to enforce its criminal laws against a tribe on a reservation. A fortiori, where neither tribal sovereignty nor a reservation are involved, as is the case in the Juneau Indian Village, state criminal law enforcement authority can hardly be questioned. Therefore, so long as specific provisions of Juneau's penal code can fairly be viewed as "criminal/prohibitory" in nature, they can be enforced in the Juneau Indian Village, as elsewhere, without violating federal law. Of course, such statement must be qualified by reference to 18 U.S.C. § 1162(b)'s prohibition of alienation, encumbrance, or regulation of restricted Native townsite lots.

An interest is also expressed by municipal counsel in enforcement of the health and sanitation code, and in particular in enforcement of provisions relating to refuse collection, sewer and water service and systems, and litter control. That such matters are of concern not only to restricted lot owners within the Village, but to their Village neighbors and the surrounding community, is certainly understandable. Based on the analysis in this memorandum, the relatively modest likelihood that enforcement actions could be successfully resisted under federal law on the grounds of federal preemption or infringement of tribal sovereignty might reasonably be regarded as an insufficient reason for the municipality to forego an attempt to apply its health and sanitation ordinances against restricted townsite lot owners in the village. A respectable argument can be made that such municipal health and sanitation regulations are more in the nature of prescriptions of individual conduct than of encumbrances on property, and 25 U.S.C. § 231 may also incrementally strengthen the case for applicability.

Cases upholding these types of state or local regulation include: People v. Rhoades, 90 Cal. Rptr. 794 (Cal. Ap. 1970) (upholding conviction for violating resource code provision requiring maintenance of fire breaks on grounds that requirement did not constitute an "encumbrance"); Norvell v. Sangre de Cristo Development, 372 F. Supp. 348 (D. N. M. 1974) (refusing to give

effect to 25 CFR § 1.4 as validly barring enforcement of state water quality laws against long term lessee of tribal land); and Thomsen v. King County, 694 P.2d 40 (Wash. App. 1985) (upholding application of health regulations governing wells and septic tanks to non-Native owners of reservation land). Of course, the analysis is complex, and the number of factual and legal variables make it possible to distinguish just about every reported decision, but certain basic features of the situation would suggest the possibility of a different outcome than that reached in the Ninth Circuit's Santa Rosa and Humboldt decisions, supra, both of which invalidated attempts to enforce county building and zoning ordinances against Indians living on reservation lands, based on the Court's interpretations of P.L. 280 and 25 CFR § 1.4.

Obviously, the municipal ordinances as to the enforcability of which the greatest doubt exists are the building and zoning codes, since they come closest to constituting "encumbrances" upon the restricted fee Native townsite lots in the Village. However, even as to municipal ordinances dealing with these subjects, the City and Borough is in a relatively strong position to defend its assertion of legal authority to pursue whatever enforcement actions might be deemed appropriate under otherwise applicable codes. While the enactment and application to Alaska of P.L. 280 is now clearly recognized not to have expanded state regulatory authority over trust and restricted lands, it is an open question as to what authority the municipality might have had prior to or in the absence of P.L. 280.

Here, under traditional precepts of Indian law, there is little apparent basis for concluding that exercise of State jurisdiction has either been preempted, or would constitute an infringement on tribal sovereignty. With respect to owner-occupied or vacant properties, there is no comprehensive federal scheme of zoning or building codes, or other land use regulation, which could be argued to in effect oust State jurisdiction. Thus, preemption cases such as Segundo v. City of Rancho Mirage, 813 F.2d 1387 (9th Cir. 1987) (rent control ordinance preempted); Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832 (1982) (imposition of gross receipts tax on company constructing Indian school held preempted); and White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980) (imposition of state tax on logging company harvesting tribal timber on reservation preempted) are distinguishable.

Moreover, the relevance of 25 CFR § 1.4 would appear to be limited to those few restricted lots in the Village, if any, subject to Interior-approved leases, and would not therefore

figure prominently in the preemption analysis. While such statement might appear to be at odds with the Ninth Circuit's Santa Rosa and Humboldt decisions, those cases do not reflect a recognition of the limited scope of the regulation, which the Department regards as applicable only to leased lands as to which Congress has expressly authorized extensive federal control through the amendment to 25 U.S.C. 415.

Also significant as a basis for distinguishing the Juneau situation from that facing the Santa Rosa and Humboldt Courts is the fact that the Juneau Indian Village is not an Indian reservation. Even in the wake of Bryan v. Itasca County, supra, the U.S. District Court for Alaska relied on this fact to uphold imposition of a Borough personal property tax on the possessions of Native restricted townsite lot owners. People of South Naknek v. Bristol Bay Borough, supra, 466 F. Supp. 870, 879. As noted previously in the discussion of the 1926 Native Townsite Act, that statute evinces no intent to affirmatively restrict state authority except in the realms of taxation and alienation.

Finally, and perhaps decisively, the Juneau Indian Village situation is fairly unique in that there is no apparent argument available to opponents of City and Borough regulatory jurisdiction to the effect that municipal regulation of land use constitutes an infringement upon federally protected tribal self-government. The lack of a recognized village governmental entity for Natives residing in Juneau makes the case against state land use regulation a weaker one than it would be in many other communities in the State of Alaska. In the Santa Rosa case, "... the historical backdrop of tribal sovereignty over reservation lands" was plainly identified as a key factor contributing to the Court's conclusion that the County had no regulatory jurisdiction over Indian land use. 532 F.2d at 658. But neither a tribal government nor a reservation are relevant factors in the case of the Juneau Indian Village. Therefore, even with regard to the municipality's building codes and zoning ordinances, a relatively persuasive case can be made in support of City and Borough jurisdiction over restricted townsite lot property.

C. The Role of the Bureau of Indian Affairs

In Ms. Blasco's letter she asks several questions aimed at determining the BIA's responsibility to act affirmatively to eliminate various undesirable conditions prevailing in the Village, as to which general community concern has been expressed.

9/ This memorandum specifically refrains from expressing a view on that more difficult issue.

She also inquires as to the type of reaction Juneau might expect from the federal government if the municipality elects to pursue nuisance abatement or any of a variety of code enforcement actions relative to restricted Alaska Native townsite lots in the Indian Village. The short answer to both these questions is "little, if any."

Neither as a general proposition, nor specifically with reference to townsite lots deeded to Alaska Natives subject to restrictions or alienation and taxation under the 1926 Native Townsite Act, has Congress authorized the BIA or any other federal agency to regulate the conduct of restricted townsite lot owners, on or off their property, or the use to which such property is put.¹⁰ Pertinent federal regulations of general applicability relate in the main to the implementation of the statutory restrictions on alienation of trust or restricted Indian property. Removal of restrictions by certification of competency, sale, lease, or granting of rights-of-way, dealt with respectively in 25 CFR Parts 152, 162, and 169, are all examples of statutorily-authorized areas of Interior Department authority, but each deals with a species of alienation.

In contrast, there are no applicable federal laws dealing with building, mechanical, electrical, or thermal codes, refuse collection, sewers, litter, or water utilities. Likewise, the BIA has been granted no authority to enact or enforce a penal code, traffic code, or system of land use regulation. Accordingly, the BIA has no authority to deal with vacant houses, sanitation problems, vagrancy, substance abuse, or other threats to public health, welfare or order which might arise on restricted property in the Juneau Indian Village.

The nearest thing there is to a legislative grant of broad regulatory power is that found in 25 U.S.C. § 415, upon which the Department currently relies as statutory authority for issuance and implementation of 25 CFR § 1.4. However, as noted previously, that authority relates solely to leased land, and in effect can only be implemented and enforced by contractual imposition of specific requirements upon the parties to a lease. Although the BIA could, under § 1.4(b), consider adoption by reference of City and Borough ordinances as federal law, that

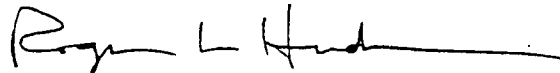
^{10/} The only exceptions to that general statement relate to the issues of alienation and taxation of such property, or to consensual relationships voluntarily entered into between the owner and the government, such as might relate for example to a housing improvement program under which federal funding was made available subject to certain terms and conditions.

would constitute at best an incomplete solution to the problems facing the community. It might also tend to perpetuate the confusion that has prevailed thus far with respect to the jurisdictional issues addressed in this memorandum. But in any event, it is a choice entrusted to the BIA's discretion under 25 CFR § 1.4.

What we are left with, therefore, are two possibilities: perpetuation of a regulatory and enforcement vacuum with respect to issues of concern to the community, or a determination by the City and Borough to deal with restricted property-owners in the Juneau Indian Village on the same basis as other municipal residents.¹¹ While the Interior Department cannot guarantee that the municipality's attempts to exercise jurisdiction will go unchallenged, we do not anticipate that judicial proceedings for that purpose would be initiated or supported by the federal government. Of course, in weighing its options the municipal government is free to attempt to steer a middle ground by selectively enforcing its ordinances, applying only those regulations it feels most confident about defending on jurisdictional grounds, but the analysis set forth above reveals few clear cut legal criteria to inform such a selection process.

Conclusion

Although complexity and uncertainty are unavoidable features of the legal landscape which confronts the City and Borough of Juneau in determining the extent of its regulatory jurisdiction over restricted townsite lots in the Juneau Indian Village, we are hopeful that this memorandum will usefully guide the municipality's analysis. If you have further questions, please feel free to contact us again. Having once undertaken this effort at synthesis, we are confident that we can respond more promptly to specific questions you might pose in the future.



Roger L. Hudson

Attachments

11/ Subject of course to the unambiguous restrictions on taxation and alienation imposed by the express statutory language of the 1926 Alaska Native Townsite Act.

RECEIVED
JAN 08 2007
ALASKA
CBJ - LAW DEPT.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CITY AND BOROUGH OF JUNEAU,)
Plaintiff,)
vs.)
CLARENCE A. LAITI,)
Defendant)

Case No. J 517511 and J 517516

MEMORANDUM DECISION AND ORDER
ON MOTION TO DISMISS

Defendant has filed a letter (motion) requesting dismissal of the present citations. (see letter dated 06 December 2006). Plaintiff has filed an Opposition dated / filed 18 December 2006. There has been no Reply timely filed by the Defendant.

Defendant avers that these citations be dismissed for "lack of jurisdiction" while citing referenced Code of Federal Regulations. Plaintiff responds that the City is authorized to enforce health and sanitation ordinances or restricted lots.

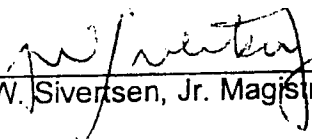
First, the legislative history of the Native Townsite Act articulated no congressional intent to prohibit state or municipal exercise of regulatory jurisdiction over restricted townsite lots. (see, City of Klawock v. Gustafson, Case No. K-74-2, U.S. District Court for Alaska decision of Nov. 11, 1976). Second, it is enlightening to note the Public Law 280 has been found not to have pre-empted local regulation. See, Novell v. Sangre de Cristo Development, 372 F. Supp. 348 (D. N. M. 1974). Third, there is little effect of 25. C.F.R. sec. 1.4 on local community regulation over land which is not the focus of native reservation land and not an intrusion upon native sovereignty. Fourth, even assuming for argument that the Defendant's land rests on a native allotment, the statute under 25 U.S.C. sec. 231 does not apply

CBJ VS. LAITI, J-517511; 517516, MEMO/ORDER ON MOTION TO DISMISS

1 because the Alaska Native townsite is not a reservation. The absence of tribal jurisdiction
2 implies the authenticity of local authority.

3 Based on all of the above, and for lack of good cause, Defendant's Motion To Dismiss
4 is hereby DENIED.

5 Dated this 05 JAN., 2007

6 
7 J.W. Siversen, Jr. Magistrate

8 Certificate of Service

9 I certify that on 5 day of Jan 2007, a copy of the foregoing was provided by mail/court box to:
10 Plaintiff, City Attorney Office; and Defendant, C.Laiti.

11 
12 L. Ray
13 Assistant to the Court
14
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Proposed Rezone: Subdivision

Map Key	Parcel Number	Property Address	Legal Description	Lot size, square feet	Subdivided Lot Size	
					MU2 4,000	MU 3,000
1	1C060V020000	42-54 Gordon Street	JUNEAU INDIAN VILLAGE BL 2 LT 9A [PATAGONIA CONDO LAND]	4686	N	N
2	1C060V030040	305 Village Street	JUNEAU INDIAN VILLAGE BL 3 LT 8	1321	N	N
3	1C060V030030		JUNEAU INDIAN VILLAGE BL 3 LT 7	268	N	N
4	1C060V030050		JUNEAU INDIAN VILLAGE BL 3 LT 9	5008	N	N
7	1C060V030000	320 Willoughby Avenue	INDIAN VILLAGE BL 3 LT 12 - 18 (TH ANB CONDO LAND), US 4694 6	26053*	6	8
22	1C060V030020	343 Village Street	JUNEAU INDIAN VILLAGE BL 3 LT 1	850	N	N
23	1C060V040120	353 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 12	1637	N	N
24	1C060V040130		JUNEAU INDIAN VILLAGE BL 4 LT 13	507	N	N
25	1C060V040150		JUNEAU INDIAN VILLAGE BL 4 LT 14	7015	N	2
26	1C060V040140		JUNEAU INDIAN VILLAGE BL 4 LT 13	218	N	N
27	1C060V040110		JUNEAU INDIAN VILLAGE BL 4 LT 11	744	N	N
28	1C060V040100		JUNEAU INDIAN VILLAGE BL 4 LT 10	340	N	N
29	1C060V040090		JUNEAU INDIAN VILLAGE BL 4 LT 9	3880	N	N
30	1C060V040070		JUNEAU INDIAN VILLAGE BL 4 LT 7	676	N	N
31	1C060V040080		JUNEAU INDIAN VILLAGE BL 4 LT 8	385	N	N
32	1C060V040060	369 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 6	1487	N	N
33	1C060V040160	406 Willoughby Avenue	JUNEAU INDIAN VILLAGE BL 4 LT 15	1616	N	N
34	1C060V040050	375 Village Street	JUNEAU INDIAN VILLAGE BL 4 LT 5	2335	N	N
35	1C060V040170		JUNEAU INDIAN VILLAGE BL 4 LT 16	2198	N	N
44	1C060K680010	410 Willoughby Avenue	KASAAN CITY LT 2	70700	17	23
45	1C060K680020	400 Willoughby Avenue	TIDELANDS ADDITION BL 68 LT 1 & 2	8555*	2	2
47	1C060K680030	400 Willoughby Avenue	TIDELANDS ADDITION BL 68 LTS 3 - 6 & 12 FR	13899*	3	4
				TOTAL LOTS POSSIBLE	28	39

*IF parcel lots consolidated first

Irene Gallion

From: Alec Venechuk
Sent: Tuesday, December 20, 2022 2:27 PM
To: Irene Gallion
Subject: RE: AME22-06 and 08: Rezone of Aak'w Kwan District property

No Comments from GE on this -

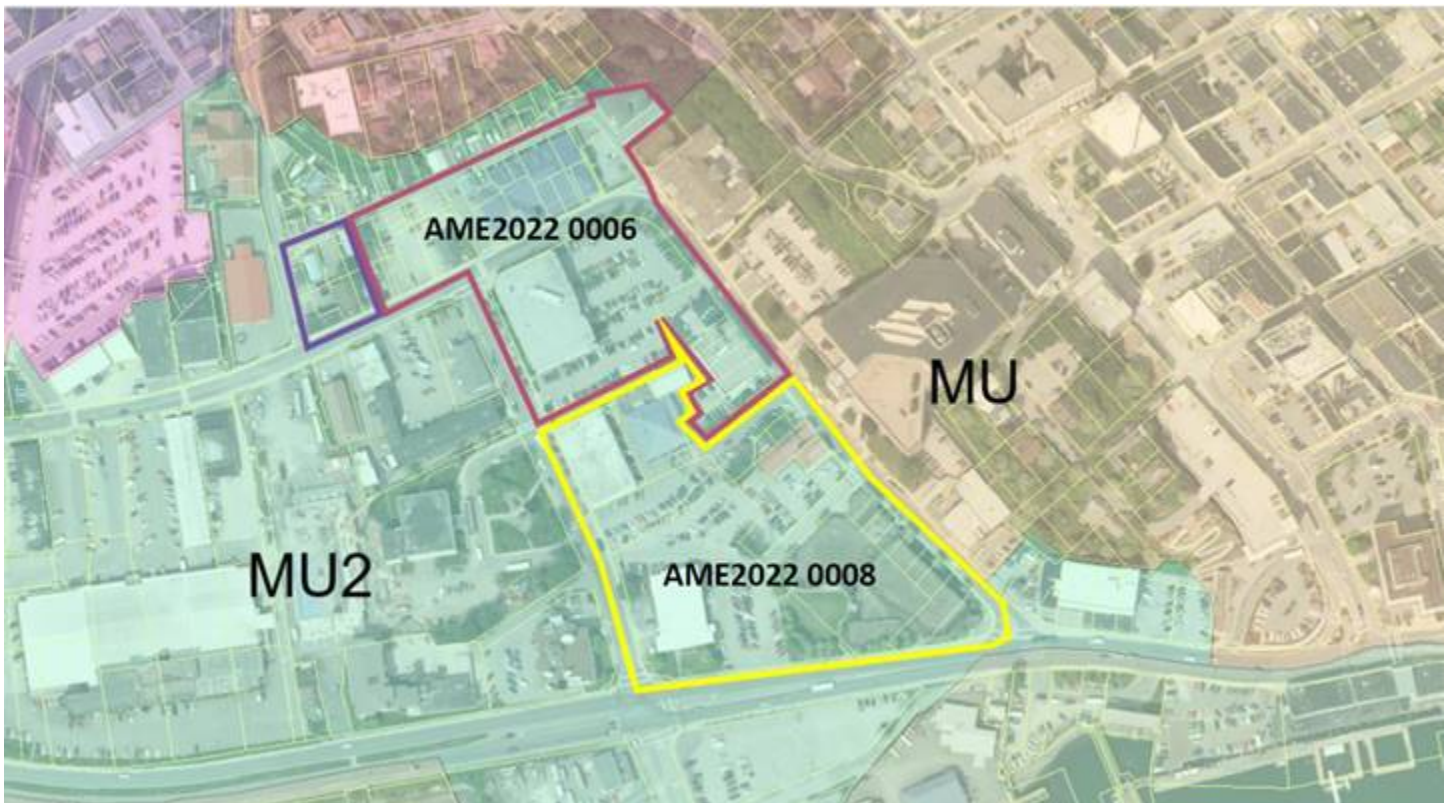
From: Irene Gallion <Irene.Gallion@juneau.gov>
Sent: Thursday, December 15, 2022 8:29 AM
To: Charlie Ford <Charlie.Ford@juneau.gov>; General Engineering <General_Engineering@juneau.gov>; Dan Jager <Dan.Jager@juneau.gov>
Cc: Dan Bleidorn <Dan.Bleidorn@juneau.gov>; Irene Gallion <Irene.Gallion@juneau.gov>
Subject: AME22-06 and 08: Rezone of Aak'w Kwan District property

Hello all,

Attached are two applications for rezoning in the Aak'w Kwan District, map below. I've attached a ZONING_Summary that outlines the changes.

If you have any comments, please provide them by **December 27, 2022**.

You may have had an early look at this in August, but it is coming to the Planning Commission in January. We had a public meeting with one attendee, who was interested in height limits.



More details can be found at the Short Term Planning web site: <https://juneau.org/community-development/short-term-projects>

Thanks!

Irene Gallion | Senior Planner

Community Development Department | City & Borough of Juneau, AK
Location: 230 S. Franklin Street | 4th Floor Marine View Building
Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

Irene Gallion

From: Irene Gallion
Sent: Thursday, August 4, 2022 11:04 AM
To: 'bill.campbell@alaska.gov'
Subject: Rezone in your area

Hi Bill,

We've received a proposed rezone in the area of the SOB (Willoughby side) and the offices that currently house ADEC. We'd like to give the State the opportunity to comment on it. Who should I send the details to?



Thanks!

Irene Gallion | Senior Planner

Community Development Department | City & Borough of Juneau, AK
Location: 230 S. Franklin Street | 4th Floor Marine View Building
Office: 907.586.0753 X2

Irene Gallion

From: Irene Gallion
Sent: Wednesday, December 21, 2022 1:59 PM
To: 'bill.campbell@alaska.gov'
Cc: Irene Gallion
Subject: AME22-06/08: Rezones in your area
Attachments: 0822_001.pdf

Hi Bill,

I wanted to check in and see if there a State position on the proposed rezone in the Aak'w Kwan District. The project will be heard by the Planning Commission on January 24, 2023. The web site can be accessed here: <https://juneau.org/community-development/short-term-projects>

I am currently drafting the staff report for this project. To be considered in the staff report, comments must be received by December 23, 2022. After that, comments will be forwarded to the Planning Commission.

The last day for written comments is January 20, 2023 at noon. Testimony will be accepted at the Planning Commission meeting on January 24th, 2023.

Thank you for any perspective you can provide.

Irene Gallion | Senior Planner

[Community Development Department](#) | City & Borough of Juneau, AK
Location: 230 S. Franklin Street | 4th Floor Marine View Building
Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

From: permits@juneau.org <permits@juneau.org>
Sent: Wednesday, December 21, 2022 1:51 PM
To: Irene Gallion <Irene.Gallion@juneau.gov>
Subject: Attached Image

Irene Gallion

From: Norton Gregory <ngregory@thrha.org>
Sent: Wednesday, December 7, 2022 3:19 PM
To: Irene Gallion
Subject: RE: AME22-06/08: Rezone in Aak'w Kwan

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hi Irene,

Thank you for the information, I appreciate it.

All the best,
Norton

Norton Gregory
Director of Housing Services
(907) 780-3125 - direct
(888) 241-6868 – toll free
(866) 291-9019 - fax
ngregory@thrha.org



Regional Housing Authority

From: Irene Gallion <Irene.Gallion@juneau.gov>
Sent: Wednesday, December 7, 2022 2:57 PM
To: Norton Gregory <ngregory@thrha.org>
Subject: AME22-06/08: Rezone in Aak'w Kwan

You don't often get email from irene.gallion@juneau.gov. [Learn why this is important](#)

Hi Norton!

Here are the attachments from the public meeting, attended by one guy who lives on Distin and was concerned about his view.

The fastest summary of changes is in the ZONING_Summary attachment.

- The PINK is CCTHITA's proposed rezone.
- The PURPLE is an extension that Staff is recommending, just so the zoning borders don't split neighborhoods. We are proposing it go to Capital Avenue.
- The YELLOW is a separate CBJ proposal for rezoning. There are some politically-charged projects in the city area – Centennial Hall/JAHC and a proposal for a City Hall – and we didn't want those to derail CCTHITA's efforts, so we have a separate proposal for city land.

I'm happy to answer any questions, and also happy to run through the presentation for you and yours if you are interested. It takes about 20 minutes.

Thanks!

Irene Gallion | Senior Planner

Community Development Department | City & Borough of Juneau, AK

Location: 230 S. Franklin Street | 4th Floor Marine View Building

Office: 907.586.0753 X2



Fostering excellence in development for this generation and the next.

1

**Thank you for being
here!
The meeting will start
at 6:00 pm**

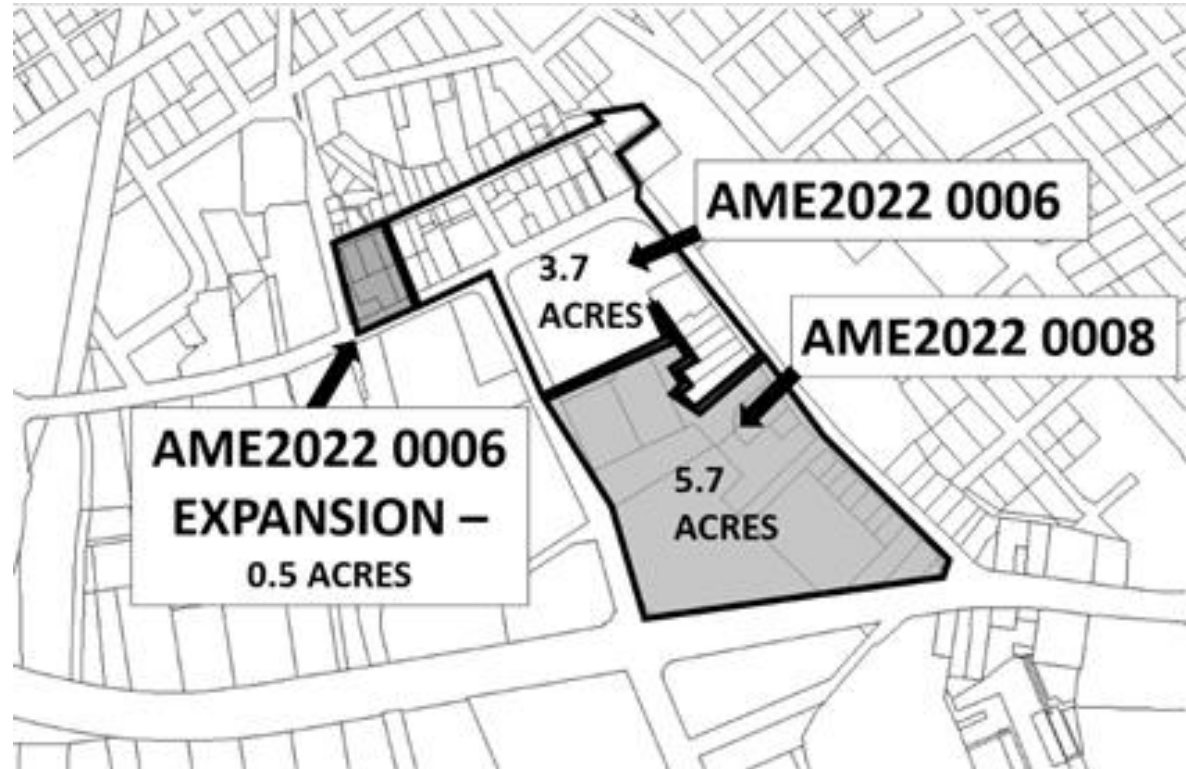
**Proposed rezone:
Approximately 9.5 (nine and one-
half) acres in the Aak'w Kwaan
District from MU2 to MU,
eliminating setback
requirements, lot coverage
restrictions and height
restrictions.**

AME2022-0006 AME2022-0008

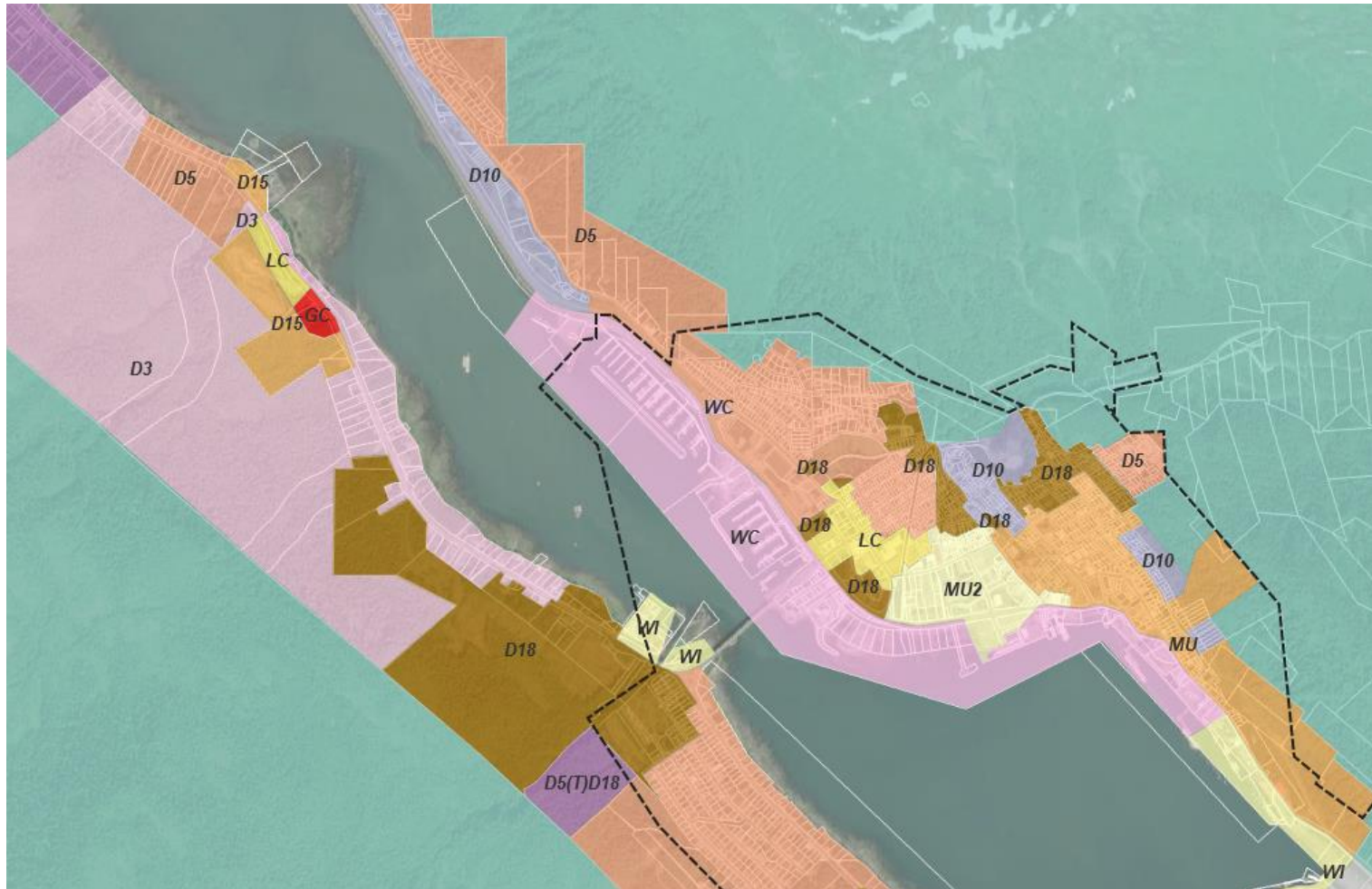
Rezone of approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

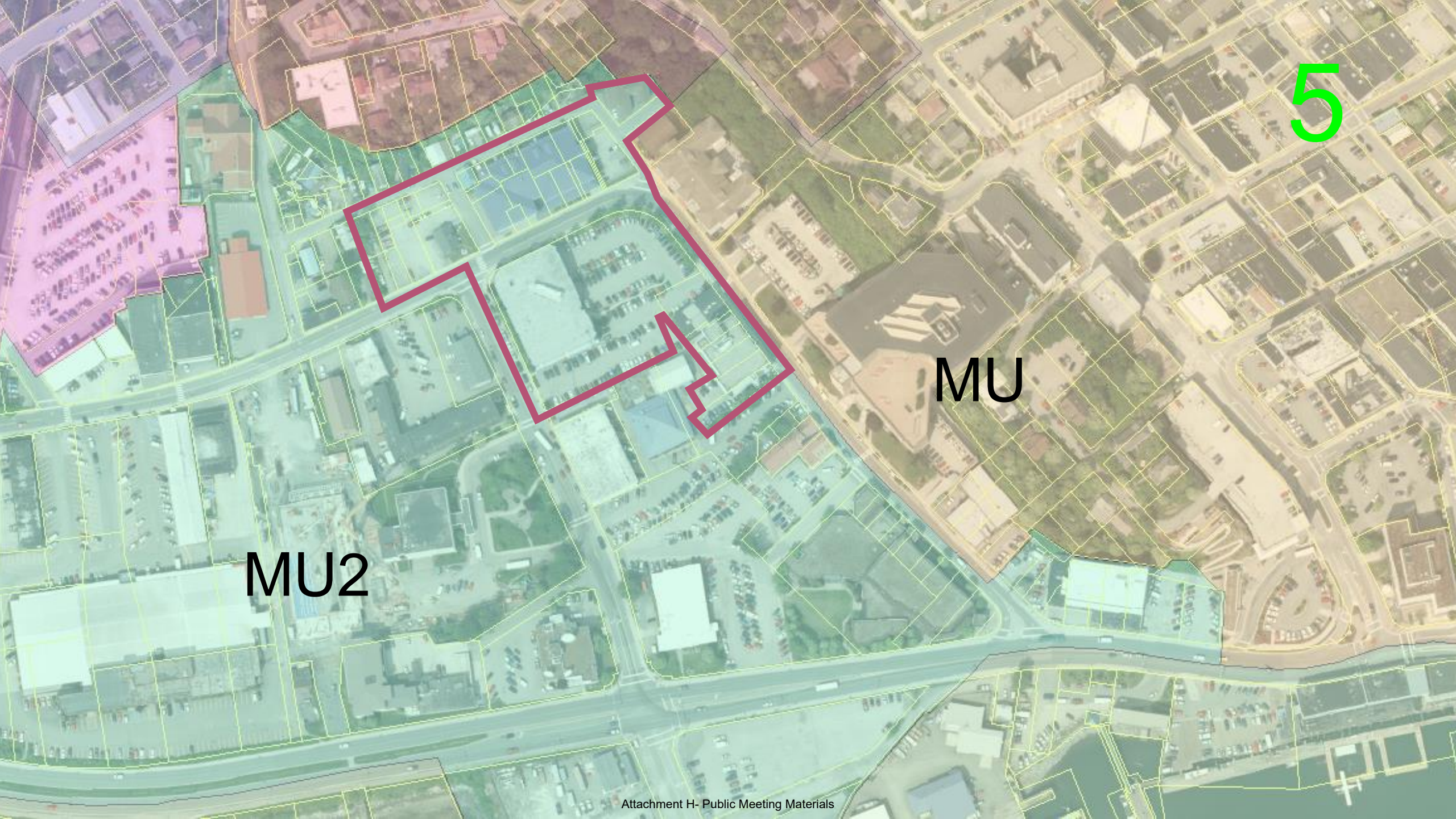
What will happen today

- Presentation from CBJ
 - What is being requested and why
 - Regulatory details
 - What the process is
- Applicant shares information
- Open to your questions.



What is a “rezone”?





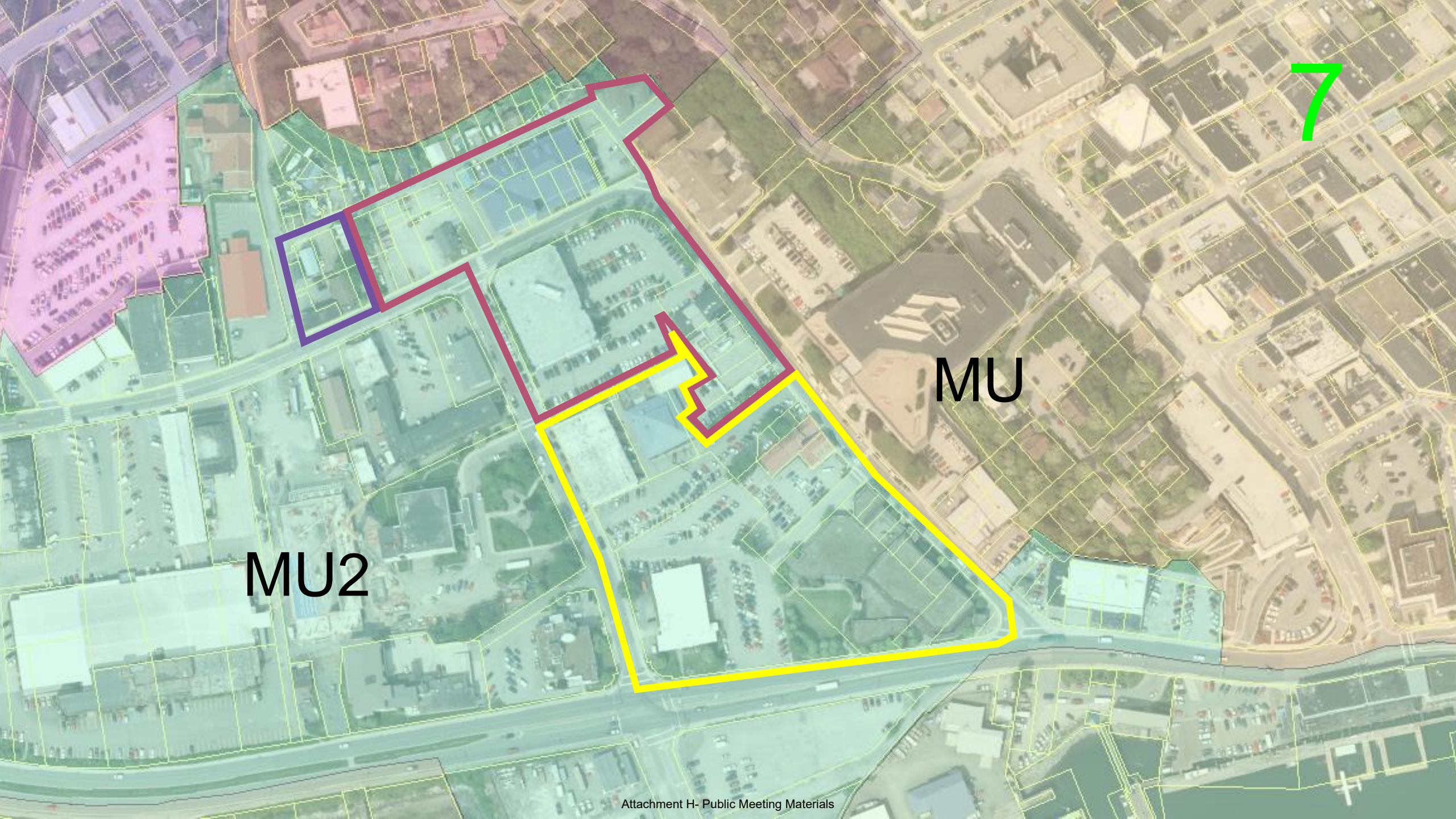
5

MU

MU2

Why rezone? Dimensional and Density

Standard	Current Zoning, MU2	Proposed Zoning, MU
Setback	Five feet	Zero Feet
Lot coverage	80%	No limit
Height Limit	45 feet for permissible uses	No limit
Density	80 units per acre	No limit



MU2

MU

7

Native Restricted Deeds



Comp Plan guides

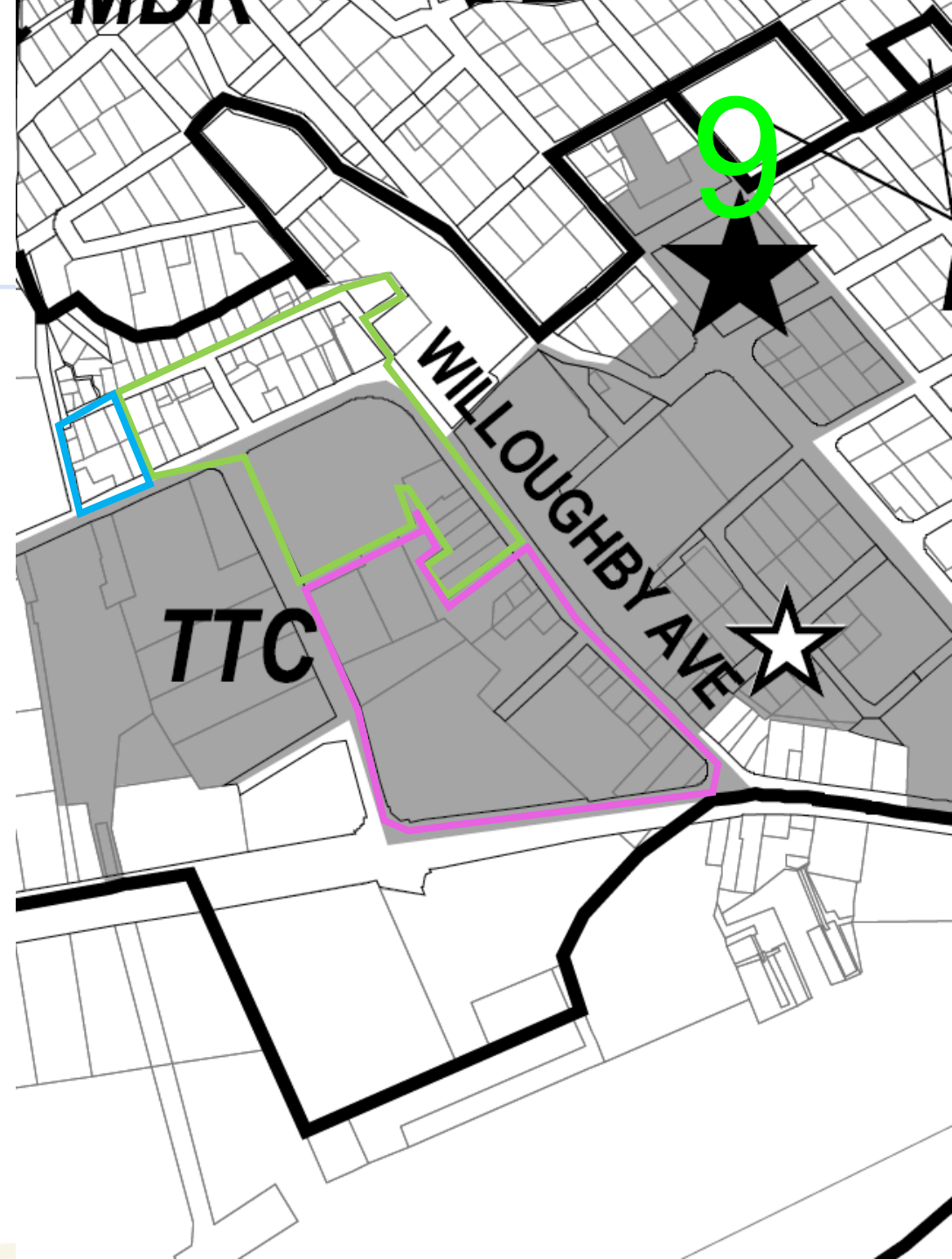
What is the difference between Land Use Designation and Zoning?

TRADITIONAL TOWN CENTER

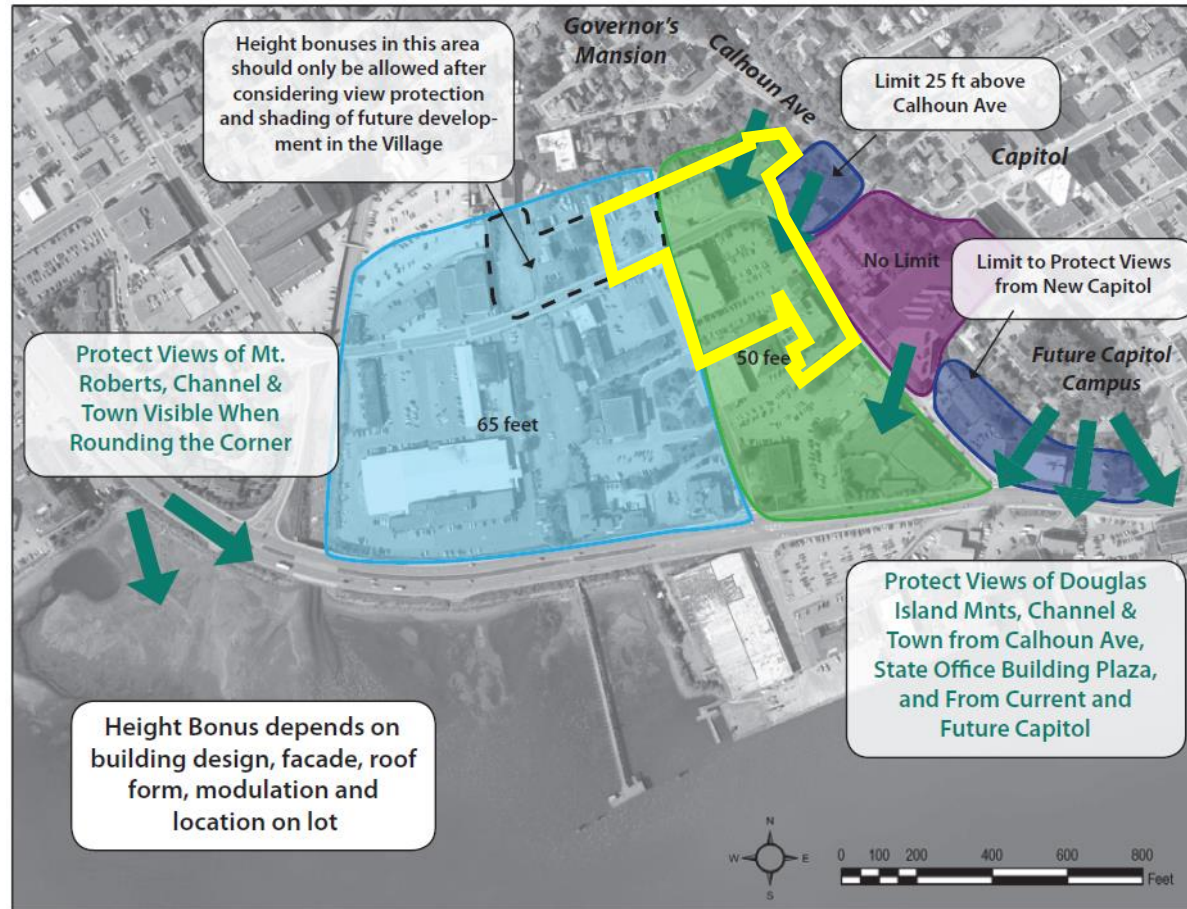
- Mixed-use High Density Residential and Commercial
- Density of 18 or more units per acre

CAPITAL COMPLEX

- Legislative infrastructure
- Pedestrian-friendly circulation
- Food and entertainment



Willoughby District Land Use Plan



Willoughby District Land Use Plan

- Build to line
- Two story minimum height
- Orient toward street
- Ground floor retail with offices/residences above
- Interesting facades
- Parking at rear or side of building
- Hidden trash receptacles, utility boxes
- Connected streets

Why rezone? Permissible Uses

Use	Current Zoning, MU2	Proposed Zoning, MU
Marijuana product manufacturing facility	Not allowed	Requires a conditional use permit
Zoos, aquaria, or wild animal rehabilitation facilities with a visitor component	Requires a conditional use permit	Not allowed

Process

- Neighborhood meeting
- Staff analysis and report
- Report posted week of **January 16, 2023** 🙌
- **Planning Commission Hearing: January 24, 2023** 🙌 Recommendation to:
 - Approve
 - Approve with conditions
 - Deny
 - Continue

Neighborhood Meeting Notice

Proposed rezone for approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

AME2022 0006
3.7 ACRES

AME2022 0008
5.7 ACRES

AME2022 0006
EXPANSION -
0.5 ACRES

0 200 400 600 800 1000 1200 1400 1600 1800 2000 Feet

CITY AND BOROUGH OF
JUNEAU
1972 CHARTER
COMMUNITY DEVELOPMENT
155 S. Seward Street Juneau, Alaska 99801
TO:

The Community Development Department is hosting a neighborhood meeting to discuss a **proposed rezone for approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.**

More information at: <https://juneau.org/community-development/short-term-projects>

NEIGHBORHOOD MEETING
December 6, 2022, 6:00 p.m.
Location: Assembly Chambers
Meeting will be held in person only.

If you are not able to attend this meeting but have questions or comments, please contact **Irene Gallion**, CDD Senior Planner, at (907) 586-0753 ext. 4130 or irene.gallion@juneau.org.

This project is not scheduled for review by the Planning Commission as of yet. All property owners within 500 feet of the proposed rezone will receive a separate notice with details on how and where to submit comments or testify before the Commission.

Case No.: AME2022 0006 & AME2022 0008
Parcel No.: Multiple
CBJ Parcel Viewer: <http://epv.juneau.org>

Printed November 22, 2022

- Schedule with the Assembly (no post cards)

Thank you!

- Paul Voelckers, MRV Architects
 - Elias Duran, Property Manager, KIRA Services
- Central Council of Tlingit and Haida Tribes of Alaska (CCTHITA)

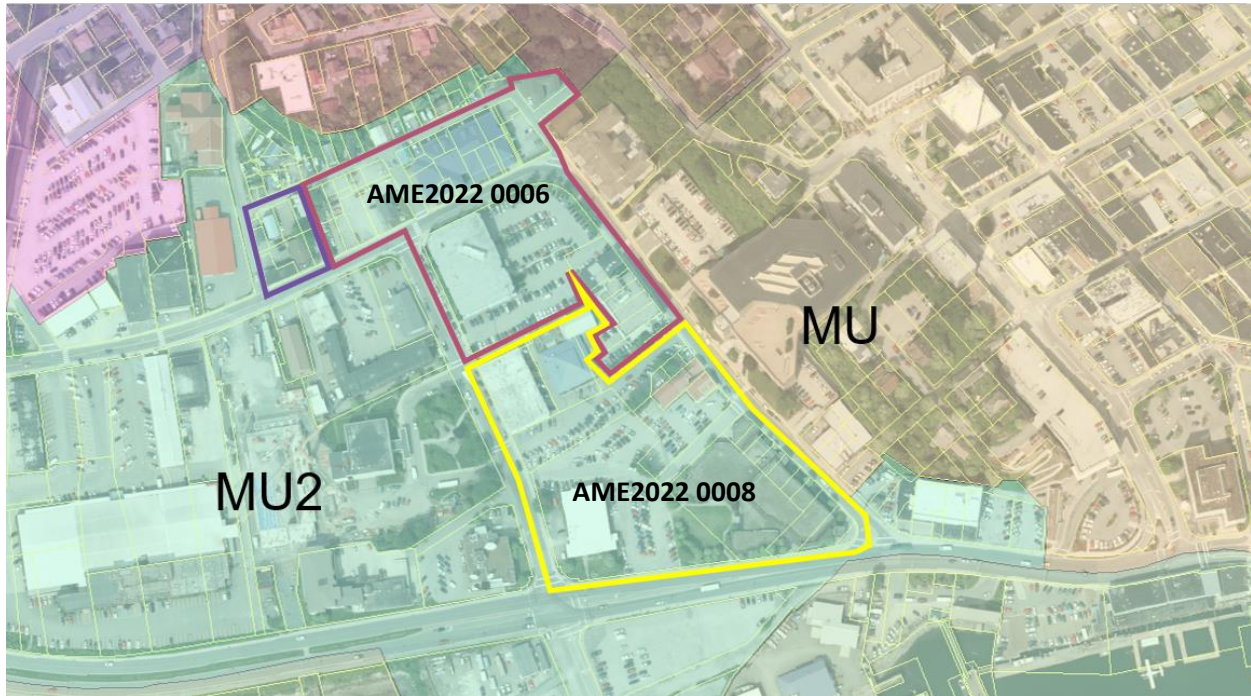
ZONING

15

AME2022 0006:

Rezone of approximately 9.5 (nine and one-half) acres in the Aak’w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

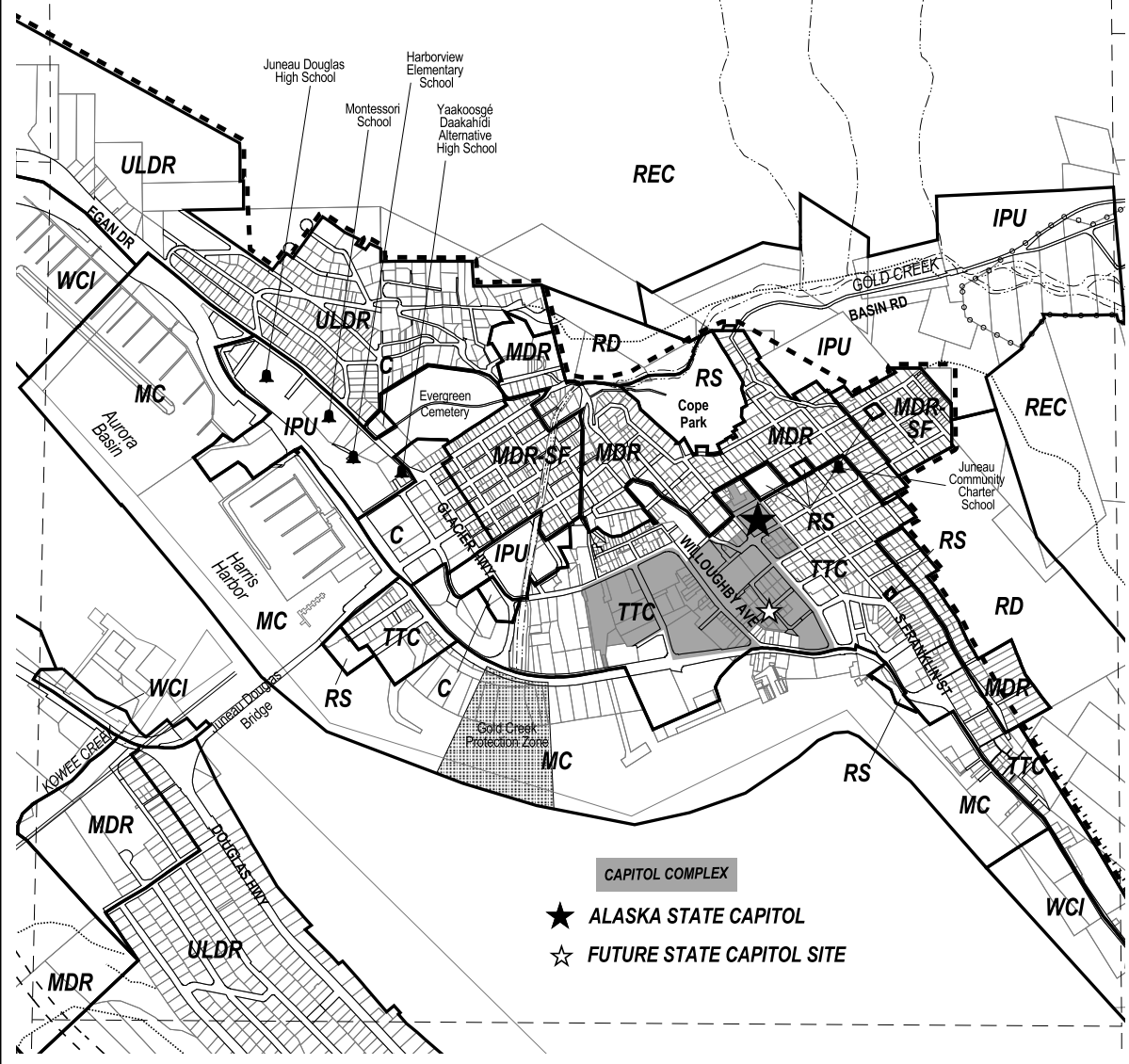
Zoning is a set of rules on how land can be developed. Zoning impacts lot size, building size and placement, and what sorts of activities can be placed next to each other. The point of zoning is to preserve property value and to separate incompatible uses. When you rezone a property, you are changing the rules under which it can be developed.



Standard	Current Zoning, MU2	Proposed Zoning, MU
Setback	Five feet	Zero Feet
Lot coverage	80%	No limit
Height Limit	45 feet for permissible uses	No limit
Density	80 units per acre	No limit

Use	Current Zoning, MU2	Proposed Zoning, MU
Marijuana product manufacturing facility	Not allowed	Requires a conditional use permit
Zoos, aquaria, or wild animal rehabilitation facilities with a visitor component	Requires a conditional use permit	Not allowed

Subarea 6 Juneau



<p>NATURAL RESOURCE</p> <p>REC Recreational Resource RD Resource Development SP State Park NP CBJ Natural Area Park RS CBJ Recreational Service Park CA CBJ Conservation Area SC Stream Protection Corridor</p>	<p>RESIDENTIAL</p> <p>RDR Rural Dispersed Residential RLDR Rural Low Density Residential ULDR Urban Low Density Residential MDR/SF Medium Density Residential- Single Family MDR Medium Density Residential HDR High Density Residential TTC Traditional Town Center M/MU Marine Mixed Use</p>	<p>COMMERCIAL INDUSTRIAL</p> <p>C Commercial MC Marine Commercial WCI Waterfront Commercial Industrial LI Light Industrial HI Heavy Industrial</p>	<p>PUBLIC</p> <p>IPU Institutional and Public Use Existing School Potential School Location</p>	<p>OTHER</p> <p> New Growth Areas Mendenhall Wetlands State Game Refuge Subarea Boundary</p>	<p>ROADS TRAILS</p> <p> Potential Arterial (alignment not specific) Potential Road (alignment not specific) Trails</p>	<p>Urban Service Area</p> <p> Beach Access Streams</p>	<p>City & Borough of Juneau COMPREHENSIVE PLAN</p> <p> City & Borough of Juneau Alaska's Capital City Adopted October 20th, 2008 Ordinance No. 2008-30</p>
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NOTE: Potential geophysical hazards, wetlands, flood zones, natural resource setbacks or other features which can affect properties may be present. CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR DETAILED INFORMATION.

LAND USE DESIGNATIONS

17

The 2013 Comprehensive Plan includes “land use designations.” These designations outline the aspirational intent for the land. Zoning rules are the specific tools used to comply with land use designations.

Traditional Town Center (TTC): These lands are characterized by high density residential and non-residential land uses in downtown areas and around shopping centers, the University, major employment centers and public transit corridors, as well as other areas suitable for a mixture of retail, office, general commercial, and high density residential uses at densities at 18 or more residential units per acre. Residential and non-residential uses could be combined within a single structure, including off-street parking. Ground floor retail space facing roads with parking behind the retail and housing above would be an appropriate and efficient use of the land.

Capitol Complex: An area in downtown Juneau which could contain legislative hearing rooms, offices, meeting rooms, pedestrian-friendly circulation systems, parking, transit services, seasonal and short-term accommodations, food and beverage services, cultural and entertainment activities, and other facilities which support the legislative activities of the state capital in Juneau. This area is shown on the land use maps for Subarea 6, particularly Map M, and is centered on Telephone Hill, the proposed site of a new State Capitol building.

Other Comprehensive Plan Land Use Types:

Recreational Service Park (RS): Recreation, parking, playgrounds and fields, ski lifts, All-Terrain Vehicle (ATV) riding parks, rifle ranges, operations and maintenance-related structures are possible uses or components of RS-designated lands.

Institutional and Public Use (IPU): Lands in public ownership and dedicated for a variety of public uses, such as the University of Alaska Southeast; local, state and federal government uses; and for such public facilities as community gardens, schools, libraries, fire stations, treatment plants, and public sanitary landfills.

Resource Development (RD): Land managed to identify and conserve natural resources until specific land uses are identified and developed. As resources are identified or extracted from these lands, they should be re-designated and rezoned appropriately.

Urban/Low Density Residential (ULDR): These lands are characterized by detached single-family units, duplex, cottage or bungalow housing, zero-lot-line dwelling units and manufactured homes on permanent foundations at densities of one to six units per acre.

Medium Density Residential (MDR): These lands are characterized by urban residential lands for multifamily dwelling units at densities ranging from 5 to 20 units per acre.

Medium Density Residential—Single Family Detached (MDR/SF): Single-family detached homes at densities ranging from 10 to 20 units per acre. Includes single-family detached homes with an accessory apartment, cottage houses and bungalow houses.

High Density Residential (HDR): Urban residential lands suitable for new, in-fill or redevelopment housing at high densities ranging from 18 to 60 units per acre.

Commercial (C): Lands devoted to retail, office, food service or personal service uses, including neighborhood retail and community commercial centers. Mixed retail/residential/office uses are allowed and encouraged. Residential densities ranging from 18- to 60-units per acre are appropriate in this area.

Marine Commercial (MC): Water-dependent commercial uses such as marinas/boat harbors, marine vessel and equipment sales and repair services, convenience goods and services for commercial and sport fishing, marine recreation and marine tourism activities such as food and beverage services, toilet and bathing facilities, bait and ice shops, small-scale fish processing facilities, hotels and motels, and similar goods and services to support mariners and their guests. Float homes, house boats, and live-aboards would be residential uses to be allowed within an MC district.

Waterfront Commercial/Industrial (WCI): Water-dependent heavy commercial and industrial uses such as marine transportation terminals, large or small boat marinas, boat repair, shipyards, marine freight handling areas, fish buying and processing plants, ice plants, marine hatcheries, and marine parks. Residential uses would not be allowed in Waterfront Commercial/Industrial Districts, with the exception of caretaker units.

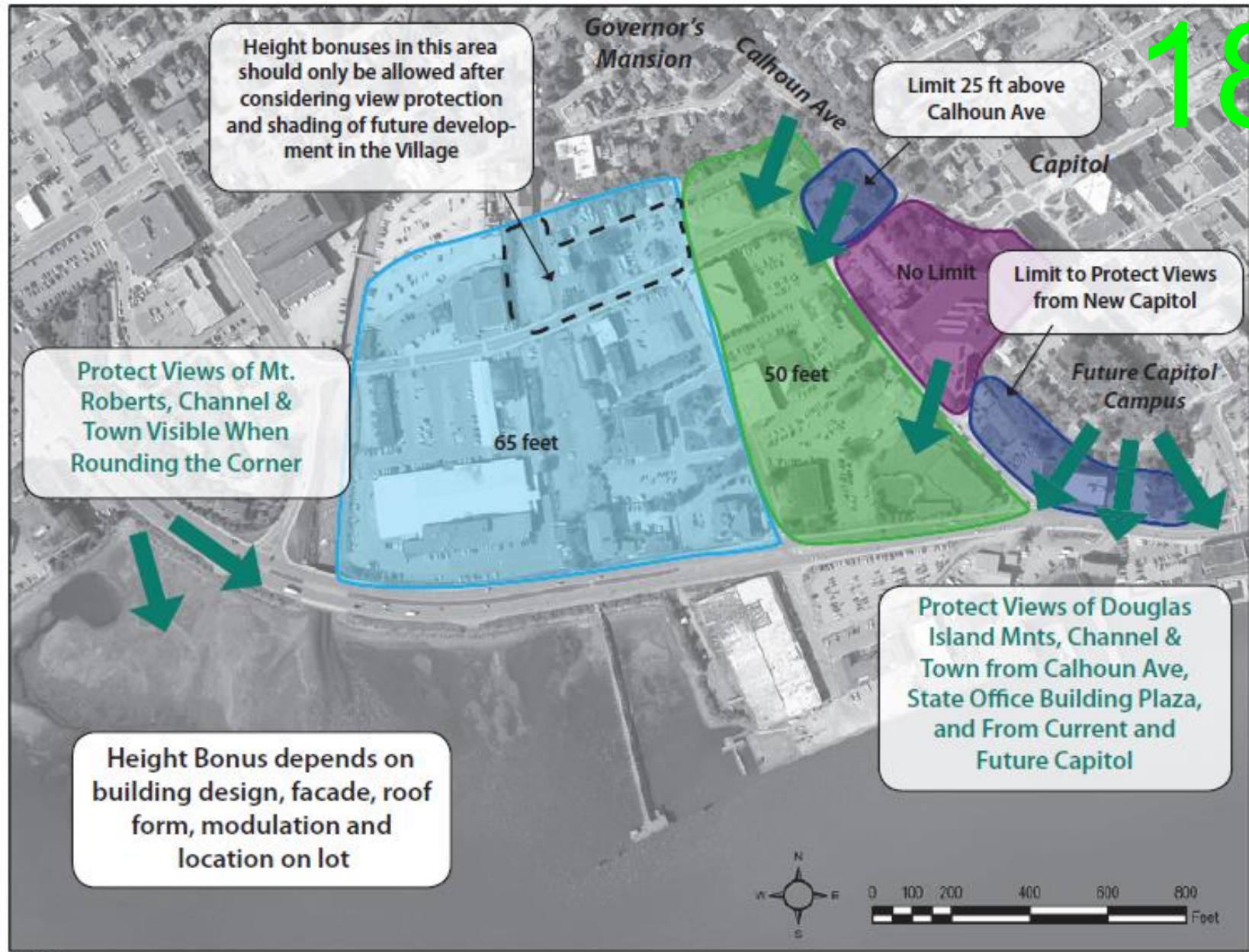


Figure 5. Building Heights (Possible with Bonus Points) and Viewsheds

AME2022 0006:

19

Rezone of approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

PROJECT INFORMATION:

<https://juneau.org/community-development/short-term-projects>

Click the + sign next to "AME2022 0006" for the map and application materials. Updated hearing information will be posted here.

PROJECT HEARING SCHEDULE:

Planning Commission Hearing:

January 24, 2023 TENTATIVE

7:00 pm

In person: Assembly Chambers, 155 S Seward Street. Go in the door next to the raven on the mural, then turn right.



ZOOM: Connection information will be available at the scheduling site (see reverse). You can participate via computer or via phone.

By computer: Either paste the link into your browser, or navigate to ZOOM and join the meeting using the Webinar ID.

By phone: When ready to participate,

- Press *9 to raise your hand.
- Press *6 to unmute yourself (if needed).

PROJECT HEARING SCHEDULE, continued:

20

<https://juneau-ak.municodemeetings.com/>

Locate the appropriate date:



City and Borough Website Search Meeting Files

Meetings Calendar Boards Subscribe

From: Sep 7 2002 To: Oct 12 2022 Meeting Group: - Any -

Meetings Directory

Date	Meeting	Agenda	Agenda Packet	Minutes	Video	View
10/11/2022 - 7:00pm	Planning Commission Regular Meeting					View Details
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09/20/2022 - 5:30pm	Board of Equalization					View Details
09/14/2022 - 12:00pm	Local Emergency Planning Committee					View Details
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Agenda Packet : This is a web page that has the agenda, and links to supporting documents (including staff reports). This may be the easiest way to navigate through a long agenda.

WRITTEN COMMENTS

Comments can be e mailed to:

pc_comments@juneau.gov
(that is, pc UNDERSCORE comments)

Irene.Gallion@juneau.gov

Comments can be posted to:

Community Development Department
City and Borough of Juneau
155 South Seward Street
Juneau, AK 99801

Comments may be dropped off at:

Marine View Building
Corner of Ferry Way and S. Franklin Street
4th Floor permit center (hang a right out of the elevator, and it will be on your left)

If you do not have a computer available or have difficulty with writing, give Irene a call and she can take your comment over the phone: (907) 586-0753, x4130

IF the project is scheduled to be heard January 24, 2023, the last day for written comments is January 20, 2023, NOON.

Irene Gallion, Senior Planner ■ (907) 586-0753, x4130 ■ irene.gallion@juneau.org

Public Comment Sign-In Sheet

Meeting: 12/6/2022

21

Name (please print)	Residence Address or Area of Town	Email Address – if you would like to receive project updates
<i>Sample: Joe Juneau</i>	<i>555 Fifth St., Juneau</i>	<i>joe.juneau@juneau.org</i>
<i>ELIAS DURAN</i>	<i>9219 BLACK WOLF</i>	<i>edurana@kira.com</i>
<i>PAUL VOELCKERS</i>	<i>1760 CAPITAL VIEW CT.</i>	<i>paul@mrvarchitects.com</i>
<i>GREY PENDLETON</i>	<i>329 Distin Ave.</i>	<i>gwendleton@gmail.com</i>

From: Emily Suarez
Sent: Wednesday, December 7, 2022 9:43 AM
To: Irene Gallion
Subject: Public meeting notes

Hi Irene,

This is what I have from yesterday's meeting.

- Clarification on height restrictions between MU and MU2 zoning districts.
- MU does not have a height limitation compared to MU2 zoning district.
- Attendee asked a question regarding height limits for the new rezone proposal, and how that might have an impact on his neighborhood.
- Attendee also mentioned how a variance could be applied under current code to modify height restrictions for current zoning district. However, the rezone would allow for a more streamlined process for developers and building permit applications for future projects.
- Attendee was supportive of rezoning from MU2 to MU, and for future development to maintain a height between 50 feet to 65 feet.

Thank you,

Emily Suarez | Planner II

[Community Development Department](#) | City & Borough of Juneau, AK

Location: 230 S. Franklin Street, 4th Floor Marine View Building

Office: 907.586.0753 ext. 4131

Note: My email will change to emily.suarez@juneau.gov beginning on December 5, 2022.



Fostering excellence in development for this generation and the next.

Re: CCTHITA Rezone Application, Aak'w Village District

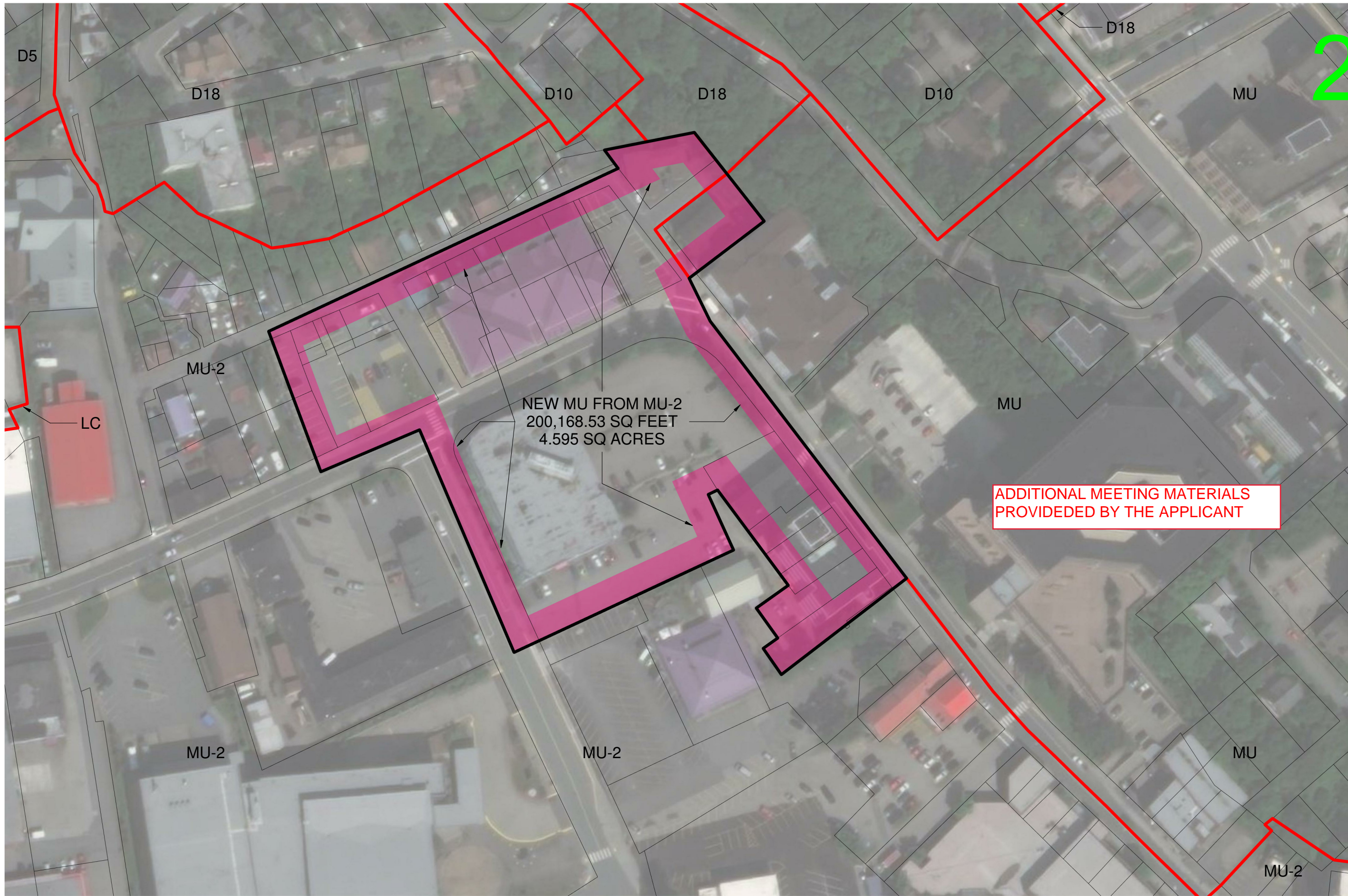
The Central Council of Tlingit and Haida Indian Tribes of Alaska, CCTHITA, is pleased to submit this application for a zone change of a number of parcels in the historic core of the newly-named Aak'w District. Per the attached graphic, CCTHITA is hoping to revise the indicated properties from MU2 to MU zoning. Each of the properties identified in this block is controlled by Central Council.

The strategic reasons for this are identified following. First, MU is the predominant underlying zoning in the developed urban core of Juneau, and this existing zoning abuts the new rezone parcel along Willoughby Street, or the long northeasterly edge of the property.

Second, this rezone to MU is consistent with the Comprehensive Plan in this area, which indicates the proposed area is "TTC", Traditional town Center, also consistent with other northeasterly areas of the established downtown core.

Third, this rezone will allow greater flexibility to CCTHITA as building upgrades and new projects are considered for the downtown central properties.

The ability of MU to build to property lines, along with greater height opportunity, will allow us the potential for more efficient mixed-use solutions in this area. MU allows an unlimited number of housing units per acre, as opposed to MU2 which is capped at 80 housing units per acre.



MRV
ARCHITECTS
ARCHITECTURE · PLANNING · INTERIORS

MRV ARCHITECTS
1420 GLACIER AVE. #101
JUNEAU, AK 99801
907-586-1371
FAX 907-463-5544
mrv@mrvarchitects.com

MRV # 2215

ZONE CHANGE APPLICATION

For The
Central Council of the Tlingit and Haida Indian Tribes of Alaska

No.	Description	Date

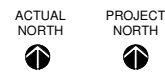
SHEET TITLE:
PROPOSED ZONE CHANGE PLAN

DATE: 6.10.2022
DRAWN: MRV
CHECKED: PV

SHEET NO.
A100

7/26/2022 1:22:05 PM \\MRV\2013\data\projects\2022\2215 CCT-HITA Downtown Planning\REV\BASE_MAP.rvt

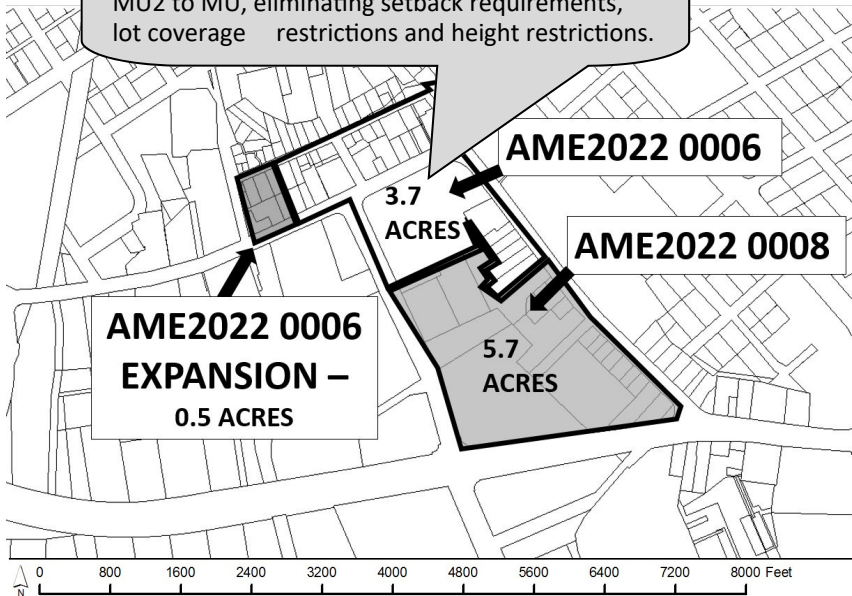
1 PROPOSED ZONE CHANGE
1" = 100'-0"



Invitation to Comment

On a proposal to be heard by the CBJ Planning Commission
Your Community, Your Voice

Proposed rezone for approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.



COMMUNITY DEVELOPMENT

155 S. Seward Street Juneau, Alaska 99801

TO:

An application has been submitted for consideration and public hearing by the Planning Commission for **proposed rezone for approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.**

PROJECT INFORMATION:

Project Information can be found at:

<https://juneau.org/community-development/short-term-projects>

PLANNING COMMISSION DOCUMENTS:

Staff Report expected to be posted **January 23, 2023** at

<https://juneau.org/community-development/planning-commission>

Find hearing results, meeting minutes, and more here, as well.

Now through Jan. 12, 2023

Jan. 12 noon, Jan. 20, 2023

HEARING DATE & TIME: 7:00 pm, Jan. 24, 2023

Jan. 25, 2023

Comments received during this period will be sent to the Planner, **Irene Gallion**, to be included as an attachment in the staff report.

Comments received during this period will be sent to Commissioners to read in preparation for the hearing.

This meeting will be held in person and by remote participation. For remote participation: join the Webinar by visiting <https://juneau.zoom.us/j/85488605721> and use the Webinar ID: 854 8860 5721 OR join by telephone, calling: 1-253-215-8782 and enter the Webinar ID (above).

The results of the hearing will be posted online.

You may also participate in person in City Hall Assembly Chambers, 155 S. Seward Street, Juneau, Alaska.

FOR DETAILS OR QUESTIONS,

Phone: (907)586-0753 ext. 4130 ♦

Email: pc_comments@juneau.gov

Mail: Community Development, 155 S. Seward Street, Juneau AK 99801

Case No.: AME2022 0006 & AME2022 0008

Parcel No.: Multiple

CBJ Parcel Viewer: <http://epv.juneau.org>



Attachment J- Public Notice Sign

Irene Gallion

From: Edwin Chappell <echappell@thtbc.com>
Sent: Wednesday, January 4, 2023 3:01 PM
To: Irene Gallion; Elias Duran; 'Paul Voelckers'; Mo Soltani; Stephanie Banua
Subject: FW: 410 permit sign
Attachments: Image.jpeg

EXTERNAL E-MAIL: BE CAUTIOUS WHEN OPENING FILES OR FOLLOWING LINKS

Hello the sign has been posted

Thank you Edwin

From: Travis Bay <travis.bay@thtbc.com>
Sent: Wednesday, January 4, 2023 2:44 PM
To: Edwin Chappell <echappell@thtbc.com>
Subject: 410 permit sign

Get [Outlook for iOS](#)



(907) 586-0715
CDD_Admin@juneau.org
www.juneau.org/community-development
155 S. Seward Street • Juneau, AK 99801

December 14, 2022

Hello Neighbor,

The City and Borough of Juneau's Planning Commission will hear a proposal to rezone approximately 9.5 acres in the Aak'w Kwan District. **If you are receiving this letter, it means you own property in the area proposed for rezone.**

Attached is information on the rezone, and what it means. To summarize, under proposed zoning:

- Buildings can be built right up to the property line. No setbacks will be required.
- A building can cover the entire lot.
- There is no limit on the number of residential units that could be built per acre.
- In theory, there is no height limit. However, any proposed building would need to be considered in light of the Willoughby District Land Use Plan, which includes protections for:
 - The view from Calhoun Avenue.
 - The view from Distin Avenue.
 - Sunlight to Village Street residents.

Zoning also impacts uses. The proposed zoning would allow marijuana product manufacturing facilities. The proposed zoning would disallow zoos, aquaria or other animal facilities with a visitor component – facilities allowed under current zoning. Other than that, uses under the proposed zoning would remain the same.

You'll receive a post card in the mail notifying you of the Planning Commission meeting date and time, and you may see the meeting advertised in the "Your Municipality" section of the Juneau Empire. The meeting will be:

Regular Planning Commission

January 24, 2022

7:00 pm

Enclosed documents have information on how to participate in person or via ZOOM.

If you have any questions, you can contact me with the information below.

Thank you for your participation in developing our community!

Irene Gallion, Senior Planner
Irene.Gallion@juneau.gov
(907) 586-0753, extension 4130

Included items from the public meeting, **Attachment G**.
* Comprehensive Plan Land Use Maps and Descriptions (page 16)
* Zoning Summary (page 15)
* Willoughby District Land Use Map - Height Restrictions (page 18)
Meeting instructions were updated with meeting scheduling information (attached).

AME2022 0006 and AME2022 0008:

Rezone of approximately 9.5 (nine and one-half) acres in the Aak'w Kwaan District from MU2 to MU, eliminating setback requirements, lot coverage restrictions and height restrictions.

PROJECT INFORMATION:

<https://juneau.org/community-development/short-term-projects>

Click the + sign next to “AME2022 0006” for the map and application materials. Updated hearing information will be posted here.

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January 24, 2023

7:00 pm

In person: Assembly Chambers, 155 S Seward Street. Go in the door next to the raven on the mural, then turn right.



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- Press *6 to unmute yourself (if needed).

PROJECT HEARING SCHEDULE, continued:

<https://juneau-ak.municodemeetings.com/>

Locate the appropriate date:



City and Borough Website

Search Meeting Files

[Meetings](#) [Calendar](#) [Boards](#) [Subscribe](#)

From: Sep 7 2002 To: Oct 12 2022 Meeting Group: - Any -

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If you do not have a computer available or have difficulty with writing, give Irene a call and she can take your comment over the phone: (907) 586-0753, x4130

The last day for written comments is January 20, 2023, NOON.

Irene Gallion, Senior Planner ■ (907) 586-0753, x4130 ■ irene.gallion@juneau.org

Attachment K- Letter to affected land owners