



CBJ CLERK

AUG 04 2023

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## OFFICE OF THE MUNICIPAL CLERK

155 S. Seward St., Room 202

Phone: (907)586-5278 Fax: (907)586-4552

email: [city.clerk@juneau.org](mailto:city.clerk@juneau.org)Assigned Assembly Appeal  
#2023-AA01

## Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals.<sup>1</sup> Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is \$500.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

**Action Being Appealed**

*Board decisions are appealable: board recommendations and most staff decisions are not.*

- ☒ Agency Appealed From: Planning Commission
- ☒ Description and Date of Decision: USE 20230003 Phase of Floating  
July 11, 2023 hearing, July 20, 2023 Dock  
Notice Filed

**Concerned Parties**

*Identify the people who have an interest in the action being appealed: yourself and others.*

- ☒ Party Filing Appeal
- |            | Mailing Address                    | Telephone    | Fax | Email                 |
|------------|------------------------------------|--------------|-----|-----------------------|
| KARLA HART | 4950 WREN DRIVE<br>JUNEAU AK 99801 | 907 957 6723 |     | Karla.jhart@gmail.com |
- ☒ Parties Who Won the Decision Appealed
- |                        | Mailing Address                                      | Telephone    | Fax | Email                 |
|------------------------|--|--------------|-----|-----------------------|
| Huna Totem Corporation | 9301 Glacier Highway Ste 200<br>Juneau, Alaska 99801 | 907 789 8504 |     | fparady@hunatotem.com |

1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:

- (1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
- (2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency of the basis upon which the decision appealed from was made; or
- (3) The agency failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.

(b) The burden of proof is on the appellant. (Serial No. 92-36

□ 2 (part), 1992).

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2016 - Appeal Form

Page 2 of 2

**Issues on Appeal<sup>2</sup>**

Concisely describe the legal and factual errors that form the basis for your appeal. Do not argue them: argument will be heard later.

Inadequate outreach for a project of this magnitude and know controversy.

Sloppy review by staff, including lack of data and analyses on many items, including health and welfare.

Demonstrated biases in information presented, phasing the project approval and no detailed info on dock or plan use.

Conditions that are in conflict with city policy (VITF).

Issues are continued on 5 pages of typed for reasons of space and legibility!

**Relief Requested**

What should the Assembly do with the action being appealed: send it back, modify it, or something else?

- 1) Appoint an independent hearing office.
- 2) Revoke this CUP
- 3) Since this approval was phased and uplands split out to USE 2023 0010 and that suffers the same lack of data and analyses, require the entire project be rejoined and returned to Community Development for complete review, data, analysis and then robust outreach to ensure outreach reflects the project magnitude and scope of impacts.

**Signature**

If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.

**Date**

2 01.50.030(b)(5) COMMENCEMENT OF ACTION.

The notice of appeal shall include a concise statement of the legal and factual errors in the decision that form the basis of the appeal.

-over-





Hart appeal of USE 2023 0003 Issues on Appeal

*continued  
from Appeal form*

August 4, 2023

**Directions are to "Concisely describe the legal and factual errors that form the basis for your appeal. Do not argue them, argument will be heard later."**

*Note that I have no model of what is meant by "concisely describe the legal and factual errors" and am not an attorney, I am an active and involved citizen is approaching this as the same. I don't want to be excluded from raising issues because I thought they were part of the argument and the hearing officer chooses to interpret as legal and factual errors. This detail is attached to my ever-so brief summary of legal and factual errors handwritten on the form.*

Unless stated otherwise, page numbers refer to the June 29, 2023 staff report from Irene Gallion to Michael LeVine.

**Outreach, including the description of a mixed use development that "includes a floating dock," with a street address of 0 Egan Drive was inadequate** for a project of this known level of controversy and community-wide impact, as well as for the timing during the summer when locals are traveling, working seasonal jobs, and otherwise not proactively looking at meeting agendas.

CDD appears to confound the past and present property owner's outreach and consider private events (Rotary, Chamber, Southeast Conference) and bar and basketball venues as public meetings. The Hanger Ballroom, closest to a meaningful public meeting, was on January 30, the same day the Assembly had a public hearing on "Resolution 3011 A Resolution Adopting Cruise Ship Tourism Policy Objectives from the Visitor Industry Task Force Final Report."

The Community Development Director was in error with respect to appropriate public outreach.

Despite a notedly (by the commission, relating to Phase 3, by this appeal, far more) incomplete application, concerns expressed about approving the project in phases, the observation of public involvement lacking, and without any substantive discussion of the dock and related impacts, or the details of the proposed staff conditions relating to the dock, the Commission chose to separate approval of that out from the rest of the project and approve a CUP for the dock **PHASE**.

The **project review was sloppy and reads more as an advocacy document** by selection of information to include, and to bury or exclude, and by wording than a thorough and objective review expected of planning staff. A lack of page numbers on the 300+ page packet hinders review.

Page 3 in background information states that "the original application was for the uplands. The Applicant added the dock to this application rather than apply for a separate one. Revisions have resulted in some redundancies in the submission." The public notice to abutters, printed June 2, 2023, includes the dock. Yet, throughout the document the dock project is neither integrated full for consideration, nor pulled out as a standalone with complete evaluation.

Examples from Gallion to Levine, June 29, 2023

"The proposal moves reception of over 100 thousand passengers out of the congested downtown dock area." (page 1)

"A dock will allow larger ships .... , increasing Juneau's cruise ship visitor capacity by 25 percent." (page 21)

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"Applicant is limited to one large cruise ship unless they subsequently modify the Conditional Use Permit with Planning Commission approval." (page 1)

Pages 25 and 26 note the limit of five large ships as a CBJ management issue, yet suggest the possibility of approval for a dock for a second large ship in the future.

"Two additional moorages for smaller vessels could be provided under the current vehicle regime..." (page 1) These statement leaves a gaping opportunity by ambiguity.

"The dock will not accommodate lightening from a cruise ship at anchor if that ship is over 750 feet or accommodates more than 950 passengers." (page 22) Page 25 Waterfront Plan info: "No berthing or lightening outside of the area encompassed by the plan." "Summary, CBJ manages current lightening facilities and would deny access to a sixth ship at anchor, or anchored outside of the managed area. A proposed condition prohibits lighting from the proposed facility." NCL, when the property owner, was very clear and vocal that building the dock would physically preclude and cruise ships anchoring out and touted the environmental and safety costs of having ships at anchor.

CBJ Docks and Harbors asked for a **navigation study**. (page 23 of 30) Rather than requiring that before approval, staff/the Commission chose to make that a condition of the CUP, approving the use without knowing how the dock (and associated use) will impact harbor navigation. They also asked for clarity regarding dock fingers in the renderings. "(Attachment A2, page 12)" is referenced. I found no corresponding page. The proponent is big on renderings of their shoreside facilities but extremely vague on the dock details.

The dock is dependent upon CBJ **leasing tidelands** to Huna Totem. The public has been repeatedly assured that will be a meaningful opportunity for input on whether or not this project goes forward. That the lease is not a done deal. Yet, page 3 "The lease provides the vehicle for the Assembly to attach qualitative policy standards to the project, based on their assessment of community interest and well-being." Bias noted.

"Once the **full details of the proposal are known, should the Assembly lease land** for the development of a cruise ship dock at the Subport?" from Watt, Jan 20, 2021 to Assembly, yet in passing a CUP without the uplands and without evaluating many other aspects, including details on the dock design and complete intended use, the Assembly will not have complete information for a lease or no lease decision.

From Watt, Jan. 20, 2021 memo to the Assembly: "Docks & Harbors is currently working on the "Small Cruise Ship Berthing Plan." That plan has preliminarily identified a preferred development option that is adjacent to and coordinates with the proposed NCL development." I note no mention of any coordination or even how this dock relates to the city dock in the staff packet.

With the exception of the condition regarding the navigation study (which should predate approval, not be an add-on condition), **Docks and Harbors had questions which appear unaddressed** by the applicant, CDD, and the Commissioners.

1. Docks & Harbors requests a navigability study be conducted to ensure the alignment of the proposed HTC dock does not impede access to the AS/CT Docks or to the USCG/NOAA Docks. The

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study should also evaluate any unreasonable impact to larger vessels (i.e. fuel/material barges) transiting Gastineau Channel under the bridge. **The AJT Dock (former Standard Oil Dock) also should be addressed as the proposed HTC appears to block reasonable access to this derelict pier which is legally on patented private tidelands.**

4. Docks & Harbors recommends the CUP address dock electrification and expected commitment from HTC to achieve shore power (**conceptual planning document**, by date certain, **anticipated financial investment**, etc.).

5. Docks & Harbors requests the applicant provide clarity to the **finger floats** shown in the renderings. What size of slips are proposed and how will these slips be utilized in the off-season.

6. Docks & Harbors requests to know if HTC will be providing navigation safety measures such as real time current monitoring and/or meteorological sensors.

7. Given a that very large cruise ships will be moored perpendicular to shore and in close proximity to the bride, **request a hydraulic study** be conducted to determine whether disruptions to the tidal flushing under the bridge or if siltation issues will be anticipated. Additionally, **evaluate safety concerns to very large cruise ships mooring with current abeam** in the proposed dock alignment.

8. An evaluation to view-shed impacts should be considered/addressed for both the dock (with vessel) as well as the proposed upland building.

Docks and Harbors asked for **view-shed** impacts as well. The applicant provides nothing re view sheds and Juneau residents Page 25, table re Long Range Waterfront Plan, also has "new docks should address impacts to view planes." the summary response is inadequate. Ships now are up to 14 floors tall, well over 1,000 feet long, and 200 feet wide. The few dock-related illustrations provided do not address resident/off-site view sheds at all.

Page 18. "**Noise** is anticipated to be in character with Mixed Use 2 and Waterfront Commercial activities..., this project does not change or mitigate those concerns." Isn't noise supposed to be below 65 db at the property boundary in daytime? Has this been measured? The ships are coming now. A professional could/should do real noise measurements that include at different elevations as noise carries at heights and across water. "Anticipated to be" is not an analysis or data.

Page 18. Habitat. Completely blows past the fact that tidelands will be impacted and intertidal areas. Zero acknowledgment. Zero analysis.

Page 20. Under **Welfare** is a gratuitous biasing statement relating to estimates of electric rates and Greens Creek Mine and Princess interruptible power that is irrelevant to the application since shore power will not be available for years. Similarly the statements re economic indicators and the visitor survey, without also acknowledging the conflicts, stress, overtourism, discontent, objects that exist.

The condition re shore power "an appropriately sized power line is within 25 feet of the property line" indicates that there is no real analysis or work done to specify what that might be, and the "at their own expense" part only starts within 25 feet of the power line, apparently it is okay with all if the general ratepayers of Juneau cover the expenses of getting the line there.

The section on property value or neighborhood harmony just blows off any analysis with a "it is challenging due to ship size increases and the ability to enforce limitations." Completely unacceptable. No real analysis was even attempted and the impacts go community-wide.



The City Attorney memo is referenced was Attachment D. Challenges of limiting the number of passengers. One undebatable legal option Juneau has for limits is not allowing another dock for large cruise ships.

CBJ revenue bonds for the city cruise docks do not allow the city to do things that might threaten revenues and the ability to pay back the bonds. There is no analysis of how having another dock might impact use or ability to charge prices at the city docks.

Page 25, "New docks should address **environmental impacts**, including shore power to mitigate air pollution." Summary, "The proposed dock includes cable trays.... However, a line capable of providing power needed is not currently proximate to the project." The document and application do not provide any meaningful environmental analysis. Not air pollution. Not water pollution. The bit about shore power is a red herring as there is no power to offer. Further, DEC has done modeling on the water discharges from cruise ships in the Juneau harbor and the modeling found water quality issues. CBJ should understand the discharge of any scrubber wastewater in Gastineau Channel. There is nothing in the application that addresses sewer discharge to Juneau treatment plants, sewer lines, costs, sewer system capacity and related either.

Page 28. Is the application for the requested Conditional Use Permit complete? "No further analysis needed." I've detailed missing analyses, there are likely others.

Page 28. "Will the proposed development **materially endanger public health, safety, or welfare?**" "No further analysis needed." NONE was done. The 2022 CBJ application for a grant for shore power, April 12, 2022 submitted by CBJ Carl Uchytel, clearly documents air pollution from cruise ships in Juneau and that there is inadequate electricity to provide shore power for one dock all of the time, much less for the city docks which are also seeking to electrify. A timeline for getting additional power online is years. Therefore, a full analysis of the health impacts of cruise ship emissions moved closer to that part of town and shore is needed. The finding is that "with appropriate conditions." Extensive modeling of winds along with analysis and weighing of health impacts of this pollution burden is needed. There is new evidence emerging in health scientific literature that demonstrates even lower levels of air pollution than once thought has adverse impacts on a wide range of health conditions. None of that is included. Even if on shore power once docked, ships tend to belch especially dirty smoke when maneuvering and this dock will require them to be doing tricky maneuvering, sometimes against winds and currents. That is not analyzed. So even in the best case, air pollution will be in close proximity. And where are the air intakes on the federal building, the SLAM, others?

At the July 11 Planning Commission meeting, Mr. LeVine stated that members had received a **letter from Alexandra Pierce, Tourism Manager**, but that they could not accept letters handed to them outside of the packet unless the sender were in person in the Assembly chambers at the time. She was not, she was on Zoom. Her proposed amendments to the proposed conditions for the dock put them in alignment with the VITF. **That the CDD staff did not take the content of the CBJ Tourism Manager commenting in her official capacity to clarify conditions to meet a guiding document for Juneau cruise tourism and put them forth themselves resulted in conditions that are not in compliance with adopted city policies.**

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The July 20, 2023 Planning Commission Notice of Decision states "The Project is to be conducted as described in the project description and project drawings submitted with the application... THERE are essentially no details in any project description. No information as to a depth of dredging needing (and environmental impacts of that), the details on the dock that Docks and Harbors requested, whether there are sewer connections and how that is done, no harbor traffic study to know what will be needed), no information on size, volume, other of ships (and corresponding passengers, traffic, and other community impacts. How does CBJ enforce this? Or the public monitor?

There is no acknowledgement in the CUP that there is yet the step of the Assembly considering whether or not to lease the land. This permit should be clear that the applicant has the further step of consideration of whether or not to lease the land rather than "... until the tidelands lease is recorded." There is no THE lease. They do not have a lease yet. And no guarantees of a lease.

4. "The Applicant will maintain and operate paths, parks, ... for year-round use." Is it the intention of the Commission that this be for year-round PUBLIC use or simply that the property owner uses it?

5. re shore power, "large ships" has a meaning in Juneau. So again there is the implication that ships under 950 feet might also be using the dock and not be required to use shore power. Is this what is intended? How does this protect the health of Juneau residents, as a 949 passenger ship is still quite large and emitting significant pollution?

6. All of this should have been done before issuing a permit and the results may influence how the project is built and you have not enough project description and project drawings to hold Huna Totem accountable.

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Planning Commission

(907) 586-0715

PC\_Comments@juneau.org

[www.juneau.org/community-development/planning-commission](http://www.juneau.org/community-development/planning-commission)

155 S. Seward Street • Juneau, AK 99801

## PLANNING COMMISSION NOTICE OF DECISION

Date: July 20, 2023  
Case No.: USE2023 0003

Huna Totem Corporation  
9301 Glacier Hwy, Ste. 200  
Juneau, AK 99801

Proposal: Conditional Use Permit for mixed use development: Up to 50,000 square feet of retail and related uses, underground bus staging and vehicle parking, and a park. Includes floating steel dock up to 70 feet wide and 500 feet long.

Property Address: 0 Egan Drive

Legal Description: Juneau Subport Lot C1

Parcel Code No.: 1C060K010031

Hearing Date: July 11, 2023

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 29, 2023 as they pertain to the floating dock. The Commission approved a Conditional Use Permit for a floating steel dock up to 70 feet wide and 500 feet long. The project is to be conducted as described in the project description and project drawings submitted with the application, and with the following conditions:

1. A Temporary Certificate of Occupancy will not be issued for the dock until the tidelands lease is recorded.
2. The minimum width of the Applicant – constructed seawalk on the south side of the lot will be 16 feet wide. The minimum width of the Applicant-constructed seawalk on the west side of the lot will be 20 feet.
3. Before Temporary Certificate of Occupancy for any phase or element of the project, the Applicant will record an easement for CBJ maintenance and management of the seawalk. The easement will be at least 16 feet wide on the south side of the lot, and 20 feet wide on the west side of the



- lot. The easement will be comparable to such easements in place for other dock owners.
4. The Applicant will maintain and operate paths, parks, landscaping, and other amenities (other than the seawalk) for year-round use.
  5. The dock owner will, at their own expense, provide shore power within 24 months after an appropriately-sized power line is within 25 feet of the property line. When shore power is provided, large ships using the dock will be required to use shore power instead of ship power.
  6. Prior to issuance of a building permit, the Applicant must provide a navigability study that includes explicit consideration of access impacts to:
    - Alaska Steam Dock.
    - Cruise Ship Terminal.
    - USCG/NOAA docks.
    - Large traffic, such as material or fuel barges, transiting Gastineau Channel under the bridge.
    - The AJT Mining Properties, Inc. dock.
    - Aircraft using the area for landing and taxiing to the float plane docks.
  7. The dock is limited to one (1) large cruise ship (750 feet or more in length OR 950 or more passengers) each 24 hour period beginning at midnight.
  8. The dock will not accommodate hot berthing.
  9. The dock will not accommodate lightering from a cruise ship at anchor if that ship is over 750 feet in length or accommodates more than 950 passengers at full capacity.

The Commission (Commission) did not adopt the analysis and findings that relate to the uplands portion of the application. The Commission found that the uplands portion of the application did not contain sufficiently specific information, particularly about the portion designated Phase 3, to support a conclusion that the project as a whole would comport with Title 49, including the MU2 land use designation.

Attachments: June 29, 2023 memorandum from Irene Gallion, Community Development, to the CBJ Planning Commission regarding USE2023 0003.

This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain the required building permits.

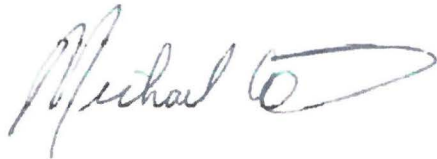
This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030(c).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

Effective Date: The permit is effective upon approval by the Commission, July 11, 2023.

Huna Totem Corporation  
File No: USE2023 0003  
July 20, 2023  
Page 3 of 3

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Expiration Date: The permit will expire 18 months after the effective date, or January 11, 2025, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to the expiration date.



\_\_\_\_\_  
Michael LeVine, Chair  
Planning Commission

\_\_\_\_\_  
July 19, 2023  
Date

\_\_\_\_\_  
[Redacted]  
Fil

\_\_\_\_\_  
July 20, 2032  
Date

cc: Plan Review

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





**TRUE NORTH**  
FEDERAL CREDIT UNION

P.O. Box 34157  
Juneau, AK 99803  
1-907-523-4700



Check No.

56387

77-7813/2913

08/04/2023

PAY

\*\*\* FIVE HUNDRED DOLLARS AND 00 CENTS \*\*\*

**EXACTLY 500 Dollars 00 Cents**

\$500.00

PAY TO  
THE  
ORDER  
OF

City and Borough of Juneau

VOID AFTER 180 DAYS

MEMO

Appeal

*Madenton*  
CHIEF FINANCIAL OFFICER  
AUTHORIZED SIGNATURE

⑈ 56387 ⑈

⑆ 325272270 ⑆

81180613 ⑈

**CITY AND BOROUGH OF JUNEAU**  
**Treasury Division**

155 South Seward  
Juneau, AK 99801  
(907) 586-5218

DATE 8/4/2023 RECEIPT NUMBER 086217

REC'D FROM: NAME Karla Hart

ADDRESS 4950 Wren Drive

CITY Juneau,

STATE AK ZIP 99801

DESCRIPTION

ARS ☐ BUS TAX ☐ REA TAX ☐ POLICE CIT ☐ SALES TAX ☐ HBR ☐ UTL ☐ G/L ☐

OTHER PAC 1-110030101-4420.0009

CODE	AMOUNT
<u>Appeal Filing Fee</u>	<u>500<sup>00</sup></u>
<u>C.U.P. use 2023-0003</u>	
<u>Parcel #</u>	
<u>1C060K010031</u>	
<u>Check # 56387</u>	

RECEIVED CREDIT CARD ☐  
AMOUNT \$ 500<sup>00</sup> CASH ☐ CHECK ☒

REC'D BY: Beth McEwen