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BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE  
CITY AND BOROUGH OF JUNEAU

	)	
KARLA HART	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
CITY AND BOROUGH OF JUNEAU	)	
PLANNING COMMISSION	)	
	)	
Appellee	)	Notice of Decision: July 20, 2023
	)	Appeal Case No. APL 2023-AA01
_____	)	

**APPELLANT BRIEF**

While Appellant raised many issues of concern in her Notice of Appeal, she is narrowing it to two key related issues for the hearing officer to consider. These are both contained within Ordinance 2022-12(am), Amendment to the Long Range Waterfront Plan found on pages 279-285 of the Record on Appeal #2023-AA01:

- 1) 49.05.200, promote health and the general welfare;<sup>1</sup> and
- 2) Visitor Industry Task Force recommendation 6, shore power is required.<sup>2</sup>

Neither health impacts nor the availability of shore power were flagged as key issues for the Planning Commissioners and public in the Planning Commission Staff Report for Conditional Use Permit USE 2023 0003, Hearing Date July 11, 2023.<sup>3</sup>

<sup>1</sup> Black’s Law Dictionary defines welfare as “resources and conditions needed for healthy and comfortable living.” Being free from air pollution seems inherent in welfare.

<sup>2</sup> Record pp77,78,79

<sup>3</sup> Record p53

1           The Assembly passed Ordinance 2022-12(am) in response to Norwegian Cruise Line  
2  
3       proposing to build a cruise ship dock and upland facilities at what is locally known as the  
4       Subport. Then City Manager Watt explained at the March 14, 2022 meeting, “the logic that  
5       [staff] proposed some time ago for handling this project request, which takes layers of approval  
6       and consent, the recommendation to the Assembly was to amend the LRWP to allow a dock so  
7       that the the Planning Commission could do the work of vetting a proposal through the filter of  
8       Title 49 and the adopted plans.”<sup>4</sup>

10       **49.05.200, Promote Health and the General Welfare**

11           During the PC hearing, Fred Paraday of Huna Totem stated, without providing any data  
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13       or analysis, the project does not endanger health or safety.<sup>5</sup> The project entails diesel-burning  
14       cruise ships of varying ages and sizes at a dock without shore power, with prevailing winds  
15       pushing pollution towards the State Museum, offices, shops, hotels, housing, including Parkshore  
16       Condominiums and Mountainview Apartments where many elderly live, and schools for a season  
17       that spans over 220 days in 2024.

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19           “Exposure to air pollution associated with emissions from ocean going vessels and other  
20       diesel engines at ports (including particulate matter, nitrogen oxides, ozone, and air toxics) can  
21       contribute to significant health problems—including premature mortality, increased hospital  
22       admissions for heart and lung disease, increased cancer risk, and increased respiratory  
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27       <sup>4</sup> March 14, 2022 Assembly meeting minutes, p9 (Exhibit A)

28       <sup>5</sup> Record p1536

1 symptoms— especially for children, the elderly, outdoor workers, and other sensitive  
2 populations.”<sup>6</sup>

3 There is no analysis of wind transport of airborne pollution in the Record. There is no  
4 mention of diesel, nor any of the components of diesel in the Record. There is no look at recent  
5 science findings that current air pollution limits are not adequate to protect public health.<sup>7</sup>

6 There is a backhanded acknowledgement of harm to health in the Staff Report with this  
7 statement, “Health: Shore power would improve heath [sic] through reduction of combustion  
8 byproducts.”<sup>8</sup>

10 But, under the Findings section relating to health, staff concluded that no further analysis  
11 was needed and, “With appropriate conditions, the requested use, in MU2 and Waterfront  
12 Commercial zoning districts, will not materially endanger the public health or safety.”<sup>9</sup> There is  
13 nothing added to explain or condition the appropriate conditions. A promise of shore power at  
14 some indeterminant time in the distant future is not protective of health.

16 \$8.2 million is an estimated monetary value of future costs from one year of of air  
17 emissions from a large cruise ship at dock daily for 16 hours for the length of the cruise season.<sup>10</sup>

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20 <sup>6</sup> CBJ Dock Electrification Fact Sheet by Juneau Commission on Sustainability, January 2,  
21 2019 (Exhibit B)

22 <sup>7</sup> One of many examples possible - “Long-term exposure to permissible concentrations of air  
23 pollution linked with increased mortality risk,” Harvard School of Public Health, October 7,  
24 2021. (Exhibit C)

25 <sup>8</sup> Record p70, following the quoted, CDD notes there are no current plans for shore power.

26 <sup>9</sup> Record p77

27 <sup>10</sup> Emissions calculated using the EPA Shore Power Calculator, <https://www.epa.gov/ports-initiative/shore-power-technology-assessment-us-ports>, applying damage costs  
28 from the US DOT Guidance for grants [https://www.transportation.gov/sites/dot.gov/files/2023-01/Benefit Cost Analysis Guidance 2023 Update.pdf](https://www.transportation.gov/sites/dot.gov/files/2023-01/Benefit%20Cost%20Analysis%20Guidance%202023%20Update.pdf). Note the DOT guidance was used by Docks and Harbors in preparing shore power grant applications for the 16b city docks.

This does not include pollution while the ship is underway and maneuvering to/from dock.

18 AAC 50.070, Marine Visible Emission Standards, allows for opacities of up to 100 percent for defined periods of time, meaning a massive ship can be spewing jet black emissions for up to nine minutes on arrival and again on departure, without violating state law. Just because it is legal, does not mean that it is not harmful to public health.

Monetized costs are realized by people as deaths, disabilities, emergency room visits, asthma attacks, and other harms. The exact amount or assumptions could be debated; the point is that there are peer-reviewed federal government tools readily available to provide some assessment of how much this proposed dock would materially endanger the public health, safety, or welfare. There is also a growing body of research that shows diesel air pollution at even low levels or short durations of exposure has significant health risks. Diesel air pollution has been associated with respiratory, cardiovascular, and neurodegenerative disease (such as Parkinson's and Alzheimers), as well as cancer. Prenatal exposure is also of concern. Juneau residents should be able to rely upon CDD professionals to gather information and make protective assessments on health risks associated with development proposals, or contract with professionals who can do so, at the expense of the applicant.<sup>11</sup>

In response to a Planning Commissioner question about phasing during the PC hearing, Assistant Municipal Attorney Sherri Layne characterized health and welfare as "the little stuff, right, that's going to affect the community and the health and welfare of everyone."<sup>12</sup>

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<sup>11</sup> Appellant is not an medical research expert; however, she has read extensively enough on literature relating to health risks of diesel exposure to know that it is of serious concern, there is a lot of new research coming out showing there is growing reason for concern at even lower levels of pollution and exposure.

<sup>12</sup> Record p1536

1 Responding to another Planning Commissioner question about housing (there were no  
2 questions or discussion about health), CDD Director Jill McLean explained, the Conditional Use  
3 Permit process and that an applicant had to come before the Commission to get a permit that is  
4 conditioned to ensure that it is caring for health, safety, and public welfare.<sup>13</sup>

5 And yet, for this large scale project with significant pollution generated by large cruise  
6 ships already a known issue in Juneau, there was no analysis. Health was not flagged as a key  
7 issue, and minutes do not reflect a single Planning Commissioner asking any question relating to  
8 health or pollution. The primary condition that could reduce harm to public health from cruise  
9 ship air emissions - shore power - was not required in the foreseeable future.

#### 11 **Shore Power**

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13 In a June 7, 2023 email, the Tourism Director told CDD, “I think we should remove the  
14 shore power condition. They just need to be honest that they aren’t providing shore power and let  
15 the assembly decide whether to grant a lease given the complexity.”<sup>14</sup>

16 At the July 11, 2023 PC meeting, in his introductory remarks on the project, Fred  
17 Paraday, of Huna Totem, stated the project “accommodates shoreside power ... and conforms  
18 with the Long Range Waterfront Plan (LRWP).”

19  
20 Accommodating shoreside power, whatever that means, does not conform with the  
21 LRWP. The LRWP was amended specifically to allow the consideration of a CUP for a cruise  
22 ship dock at the Subport location in response to Norwegian Cruise Line’s plans, but not to  
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27 <sup>13</sup> Record p1595

28 <sup>14</sup> Record p1155

1 guarantee a CUP.<sup>15</sup> Any application for development needs to be evaluated consistent with six  
2 VITF recommendations, including that the dock is electrified. To be clear that shore power is a  
3 requirement, not a recommendation, there follow, two criteria which are noted as strong  
4 recommendations. And, the requirement for shore power is reiterated in the LRWP amendments,  
5 “Environmental impacts, including consideration of shore power to mitigate potential air  
6 pollution. Criteria for development, evaluated through Conditional Use Permit process. Shore  
7 power is included in the VITF criteria above.”  
8

9 The PC awarded a CUP in violation of the LRWP, as the CUP does not require shore  
10 power before the proposed dock is put into service.

11 On November 1, 2021 the Assembly heard from engineers and consultants that Juneau  
12 had enough hydropower available to allow ships to plug into shore power at the two city-owned  
13 cruise docks just 25% of the time. The same Assembly members adopted the March 14, 2022  
14 LRWP amendment that included the requirement that a cruise dock at the Subport dock have  
15 shore power. Assembly members did not provide any qualifications about power supply  
16 availability in the LRWP amendment, despite knowing that enough power is not available. In  
17 reviewing the CUP application, CDD and the Planning Commission appear to have chosen to  
18 consider the shore power requirement as optional, rather than denying the application because it  
19 does not comply with the LRWP and shore power is integral to protecting health and welfare  
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22 (49.05.200)  
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27 <sup>15</sup> “Subport Development - Assembly Consideration Process, Discussion & Draft Approach”  
28 Rorie Watt dated January 20, 2021 (Exhibit D). Note that Norwegian first proposed the dock project, and promised shore power with it in a series of public meetings, and then transferred the property and project to Huna Totem, who made considerable changes.

As noted in the Staff Review, shore power is also mandated by the 2011 Juneau Climate Action and Implementation Plan and the 2018 Juneau Renewable Energy Strategy.<sup>16</sup> Including cable trays and other infrastructure for some day when there is a power line and power availability does not comply with adopted plans, nor is it protective of public health and welfare.

There were a few questions from Planning Commissioners regarding shore power availability and timing; however, the responses draw attention to transformer availability (as in delays) and transmission lines (not planned anytime on the horizon), and do not go to the heart of the issue, that there is not enough power generating capacity with the available hydropower and existing demands.<sup>17</sup> The Juneau Commission on Sustainability Dock Electrification Fact Sheet, January 2, 2019 is attached as Exhibit B, and provides more details.

Much more depth on shore power availability, costs, challenges, and the option for firm power is provided in the documents linked from the 2022 - Juneau Cruise Ship Dock Electrification Study at CBJ Docks and Harbors website. These documents are too voluminous to attach as appendixes, but provide a solid foundation for understanding local shore power issues from experts, and seeing some acknowledgement by local government of the health costs of cruise ship pollution in Juneau.<sup>18</sup>

## CONCLUSION

The health of Juneau residents will be harmed if the dock is allowed to be built without shore power. Awarding a CUP that does not require shore power to be installed, operational, and used from the opening of the dock does not comply with the Long Range Waterfront Plan 2022

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<sup>16</sup> Record p79

<sup>17</sup> Meeting transcript at Record pp1544-1547

<sup>18</sup> <https://juneau.org/harbors/project-archive/entry/69827>

Amendments or Title 49 protection of health and welfare.

1           The power supply does not exist to serve the cruise ships at the existing Franklin dock all  
2 of the time. The city has prioritized, through appropriation of matching funds and grant  
3 applications, installing shore power at the two city-owned cruise docks, even though there will  
4 be power for only 25% of ship calls at them. There is a forth existing cruise ship dock that is not  
5 yet connected to shore power. It is unlikely that shore power is a real option to reduce the health  
6 harm of cruise ship pollution in the foreseeable future, unless Huna Totem decides to apply for  
7 firm power and bump Green's Creek or another interruptible customer and/or create greater  
8 expense for all residents in serving firm power.  
9

10           If it is left to the applicant, CDD, and the Planning Commission to set aside the shore  
11 power provision of the LRWP 2022 Amendments, then all provisions of the LRWP 2022  
12 Amendments should return to the table, including whether or not a cruise ship dock should be  
13 allowed at the proposed location. The 2003 Long Range Waterfront Plan "shows that at the time  
14 of adoption, unsupported initiatives included majority opposition against one or two cruise ships  
15 at the Subport."<sup>19</sup> Why can't a strong decision for no cruise ship development ,made 20 years  
16 ago, be as durable and enduring as a massive dock construction, from which there is no going  
17 back?  
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27 <sup>19</sup> Rorie Watt memo to Assembly, dated January 21, 2021     (Exhibit D)  
28 <https://juneau.org/wp-content/uploads/2023/05/2021.02.11.pdf>



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**Appellant requests that you Revoke Conditional Use Permit USE 2023 0003 for noncompliance. The Planning Commission’s role is to verify regulatory and plan compliance before issuing a Conditional Use Permit. They failed to do their job in denying a permit that cannot meet plan requirement imposed specifically a cruise dock at their location. And they failed to take measures to protect public health and welfare, an overriding element of Title 49, from cruise ship exhaust.**

Dated November 30, 2023

*s/Karla Hart*  
Karla Hart, Appellant