

**CITY OF KOTZEBUE  
RESOLUTION NO. 24-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE AUTHORIZING THE CITY MANAGER, OR HER DESIGNEE, WORKING WITH THE PLANNING DIRECTOR AND CITY ATTORNEY TO ISSUE A TEMPORARY USE PERMIT PURSUANT TO KOTZEBUE MUNICIPAL CODE (“KMC”) 3.12.120 TO ARCTIC CIRCLE WILD SEAFOOD AND A TIDELANDS USE PERMIT TO ARCTIC CIRCLE WILD SEAFOOD (“ACWS”) PURSUANT TO TITLE 11, CHAPTER 11.04, “TIDELANDS REGULATIONS,” OF THE KMC FOR ITS SALMON-BUYING OPERATIONS FROM LOCAL FISHERMEN DURING THE 2024 SUMMER COMMERCIAL FISHING SEASON.**

**WHEREAS,** ACWS will be purchasing salmon from local fisherman during the 2024 July and August summer commercial fishing season as it has done for the last several years and needs to use City-owned property for its land-based operations and ancillary use of City-owned Tidelands by its local fishermen as has been its practice in past years as set forth in its submittal attached hereto as Exhibit “A” and incorporated by reference herein;

**WHEREAS,** a Temporary Use Permit shall be issued to ACWS and a Tidelands Permit will be issued to ACWS using the basic format for such form with 2023 permits issued to ACWS including, however, the amendment made on July 27, 2023 to the Temporary Use Permit as set forth in Exhibit “A” at Page 11 of 12 attached hereto; and,

**WHEREAS,** the Planning Commission reviewed these requests from ACWS at its June 13, 2024 meeting and recommended that a Temporary Use Permit and Tidelands Permit be issued to ACWS as set forth in Exhibit “B” attached hereto on such terms and conditions as deemed appropriate by the City Council.

**NOW, THEREFORE, BE IT RESOLVED,** that the City Council of the City of Kotzebue, authorizes the City Manager, or her designee, working with the Planning Director and City Attorney to issue a Temporary Use Permit to ACWS and authorizes the City Manager, or her Designee, working with the Planning Director and City Attorney to issue a Tidelands Use Permit to ACWS for its fish-buying activities for the 2024 commercial fishing season on such appropriate terms and conditions as those permits issued for the 2023 commercial fishing season.

**PASSED AND APPROVED** by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 20<sup>th</sup> day of June, 2024.

**CITY OF KOTZEBUE**

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Saima Chase, Mayor

[SEAL]

ATTEST:

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Rosie Hensley, City Clerk

Attachments:           Exhibit "A" – ACWS submittal [12 pages]  
                                  Exhibit "B" – Planning Commission materials [39 pages]



**Arctic Circle  
Wild Seafood**  
KOTZEBUE, ALASKA • PRODUCT OF U.S.A WILD

May 28, 2024

Ms. Tessa Baldwin  
Kotzebue City Manager

Dear Ms. Baldwin:

Please consider Arctic Circle Wild Seafood proposal to utilize tidelands within the city limits of Kotzebue and land use permits on City property. We will be doing business as Arctic Circle Wild Seafood (ACWS) and intend to again purchase salmon from fishermen during the upcoming commercial fishing season in July and August 2024.

ACWS would like to set up our operation using the City of Kotzebue right of way located on the intersection of fourth and sixth street just passed the Tech Center next to KIC's barge landing site as we did last season. In addition, we would like to have access to the City water service next to North tent city and will obtain a water meter so that we pay the appropriate fees for use. We also attached a diagram map showing property description and access area.

All operations will be under the direction of Arctic Circle Wild Seafood personnel with local hire for manpower. We are the only local seafood buying company in Kotzebue, locally owned and operated. Our ADF&G communication is attached from the State of Alaska. Fish and Game in Nome has also been notified of our intent to operate. Your consideration is greatly appreciated.

Cordially,

Michael J. Scott  
Managing Partner  
Arctic Circle Wild Seafood  
P.O. Box 226  
Kotzebue, AK 99752  
(907) 412-1526  
(206) 715-7804

Alaska Business License # 1057080

**Alaska Department of Commerce, Community, and Economic Development**  
Division of Corporations, Business, and Professional Licensing  
PO Box 110806, Juneau, AK 99811-0806

This is to certify that

**ARCTIC CIRCLE WILD SEAFOOD**

P.O. BOX 226, KOTZEBUE, AK 99752

owned by

ARCTIC CIRCLE WILD SEAFOOD LLC

is licensed by the department to conduct business for the period

April 19, 2023 to December 31, 2024  
for the following line(s) of business:

11 - Agriculture, Forestry, Fishing and Hunting



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.  
It is not transferable or assignable.

Julie Sande  
Commissioner



**State of Alaska**  
**Department of Commerce, Community, and Economic Development**  
**Corporations, Business, and Professional Licensing**

## **Certificate of Organization**

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

**Arctic Circle Wild Seafood LLC**



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective July 11, 2017.

A handwritten signature in black ink, appearing to read "Chris Hladick".

Chris Hladick  
Commissioner

ARCTIC CIRCLE WILD SEAFOOD  
P.O. BOX 226  
KOTZEBUE, AK 99752



**RE: 2024 Independent Buyer Application Arctic Circle Wild Seafood**

1 message

---

**Deehan, Rachel C (DFG)** <rachel.deehan@alaska.gov>

Fri, May 10, 2024 at 2:34 PM

To: Michael Scott <kotzebue57@gmail.com>

This is received.

Rachel Deehan  
Seafood Industry Technician  
907-465-6131

**From:** Michael Scott <>  
**Sent:** Friday, May 10, 2024 11:22 AM  
**To:** Deehan, Rachel C (DFG) <>  
**Subject:** 2024 Independent Buyer Application Arctic Circle Wild Seafood

Hi Rachel:

Attached is Arctic Circle Wild Seafood's 2024 Independent Buyer's application to renew our Code Y12088 for Kotzebue salmon fishery.

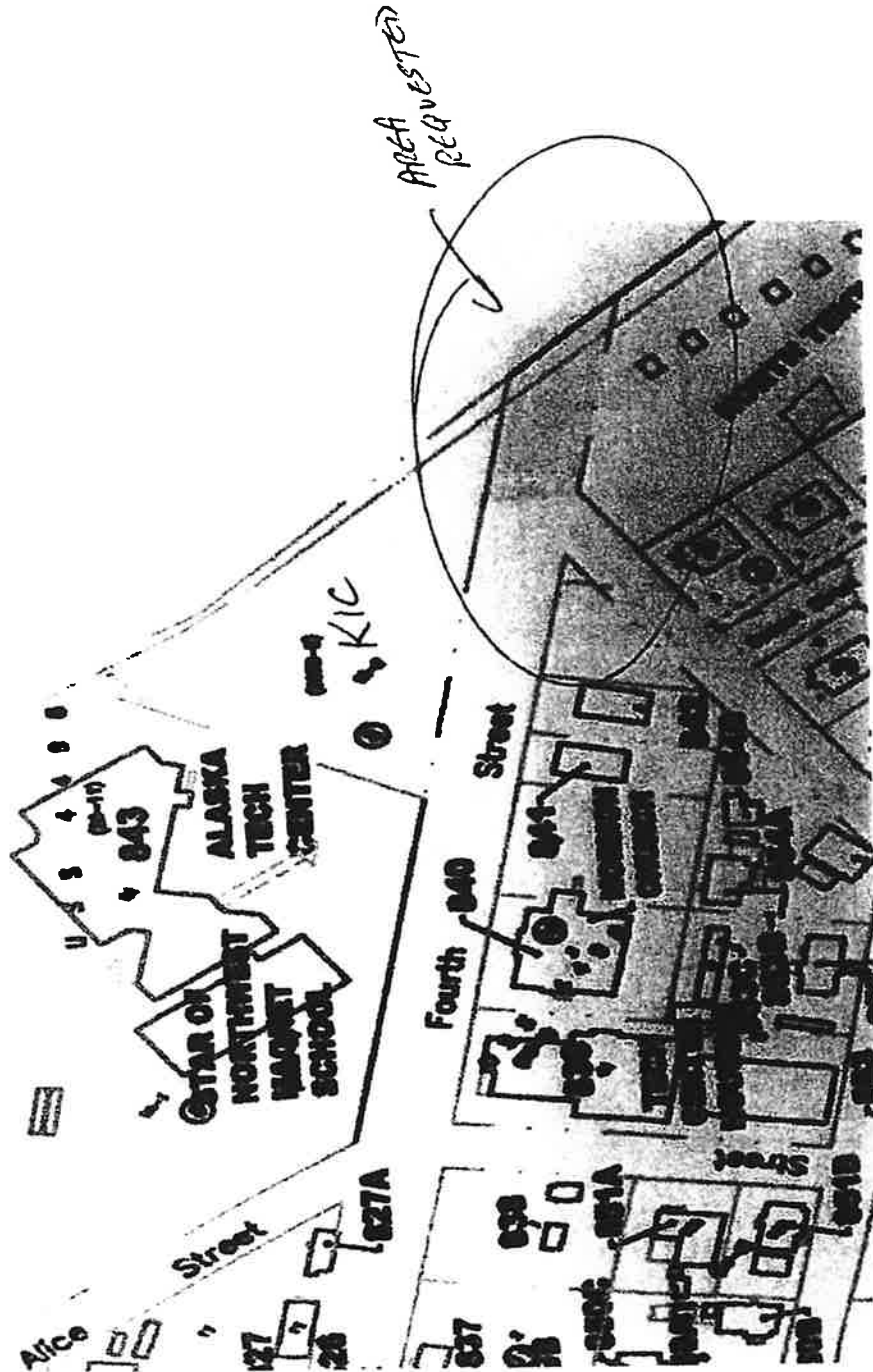
If you have any questions, please let me know.

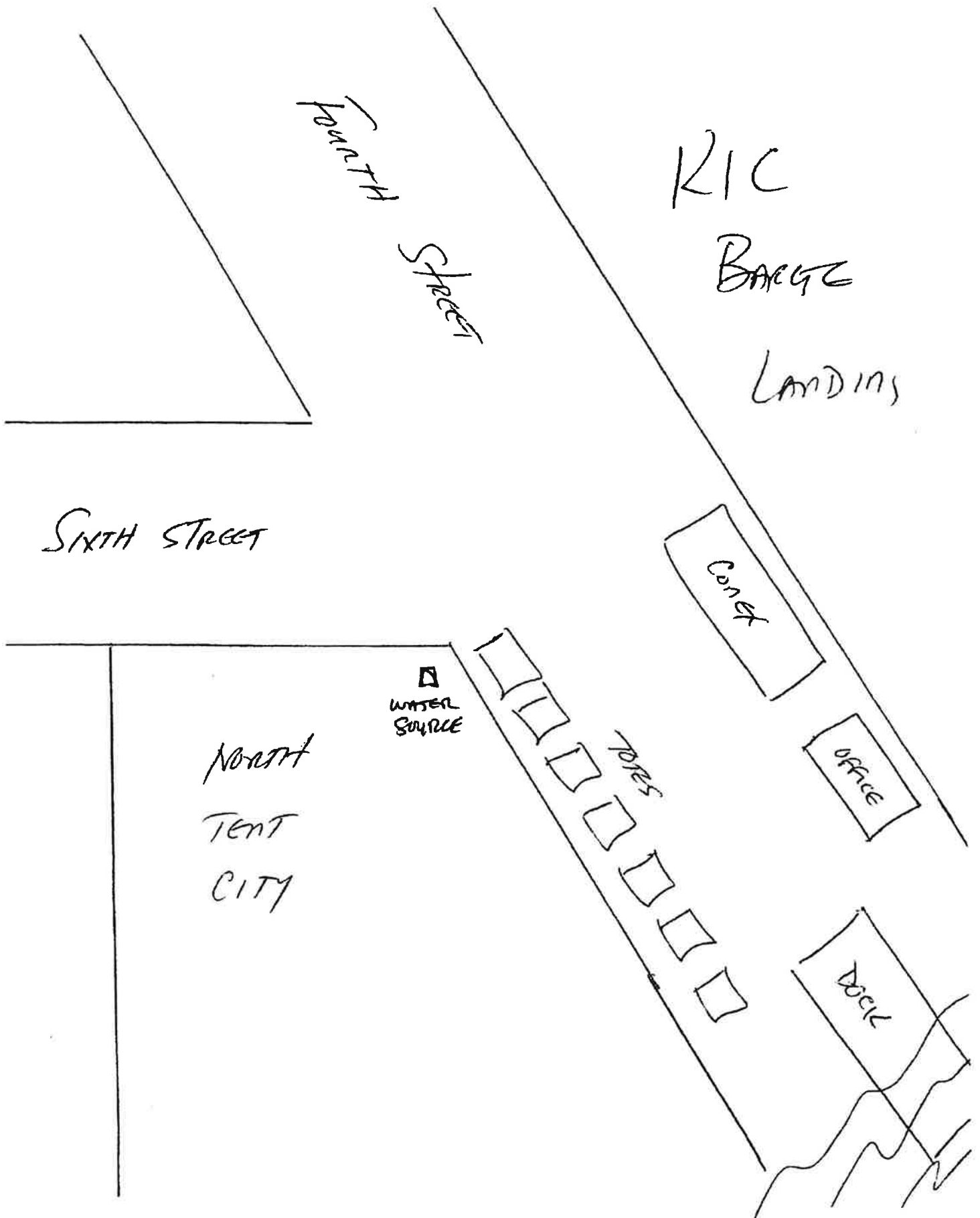
Cordially,

Mike

Michael J. Scott  
Arctic Circle Wild Seafood, LLC  
P.O. Box 226  
Kotzebue, AK 99752  
(907) 412-1526  
(206) 715-7804

ACWS Fish Buying Station





**CITY OF KOTZEBUE  
TEMPORARY USE PERMIT  
FOR ARCTIC CIRCLE WILD SEAFOOD, LLC (“ACWS”)  
PURSUANT TO KMC 3.12.120  
AND  
RESOLUTION NO.**

1. Kotzebue Municipal Code (“KMC”) 3.12.120, Use permits and licenses, provides that *“The city may, by city council resolution, issue use permits or licenses for the use of city land, not to exceed one hundred eighty days. Such use permits or license may or may not be for consideration, but such use permits or permits may be terminated at will by the city. Use permits and licenses may be issued without conforming to the requirements of [KMC Chapter 3.12] for disposal of land, unless otherwise directed by the council.”*
  2. Arctic Circle Wild Seafood, LLC has committed and agreed that the use of the City properties identified in this Temporary Use Permit will be operated in such a manner so as to not interfere with any City and public, non-commercial uses in, on or around the properties requested for use, said properties identified in ACWS’s submittal attached hereto as Exhibit “A.”
  3. Arctic Circle Wild Seafood, LLC shall indemnify, defend and hold harmless the City, its employees, officials and/or agents from any and all claims, actions, fees, expenses, costs and demands of whatever nature or type caused by, related to or in any way associated with the granting of this Temporary Use Permit, Arctic Circle Wild Seafood, LLC’s use of and/or Arctic Circle Wild Seafood, LLC’s activities on or about the City properties identified herein.
  4. Arctic Circle Wild Seafood, LLC at the end of its use of the City’s properties for the ~~2024~~ fishing season shall leave the City’s properties in a safe and properly cleaned condition, restoring them to the condition in which the properties were found at the start of the use permit granted herein.
  5. Arctic Circle Wild Seafood, LLC acknowledges and understands that this use permit may be terminated at will by the City pursuant to KMC 3.12.120 and may under no circumstances exceed one hundred and eighty (180) days.
  6. Arctic Circle Wild Seafood, LLC shall pay the City \$500.00 as compensation for this Temporary Use Permit. This compensation shall be due within ten (10) days of the execution of this Temporary Use Permit.
  7. Arctic Circle Wild Seafood, LLC shall be granted: (1) a non-exclusive, temporary use permit for its fish buying operations during the ~~2024~~ fishing season at/on the following City-owned properties at the northerly end of the City’s Right-of-Way of 4th Street where it intersects 6th Street, as set out in Exhibit “A” attached hereto; (2) the non-exclusive use of the City’s water source spigot located at North Tent City, adjacent to ACWS’s fish buying area, as described in Exhibit “A,” attached hereto, provided that ACWS shall have its water usage metered using a split-type fixture with its usage
- TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**



separately metered and such water usage shall be paid in full by ACWS at the applicable commercial rate, including fees/charges for the installation, monitoring and removal of the City's water meter, as applicable.

8. Arctic Circle Wild Seafood, LLC warrants that the individual signing below on behalf of Arctic Circle Wild Seafood, LLC has the authority and permission of Arctic Circle Wild Seafood, LLC to sign this Temporary Use Permit and in so doing to bind Arctic Circle Wild Seafood, LLC to the terms of this Temporary Use Permit.

9. This Temporary Use Permit shall be subject to all applicable provisions of Title 29 of the Alaska Statutes and the Kotzebue Municipal Code, and all amendments thereto, judicial determinations thereof and case law thereunder.

10. This written Temporary Use Permit embodies the whole agreement between the City and Arctic Circle Wild Seafood, LLC and there are no inducements, promises, terms, conditions or other obligations that are entered into herein other than those contained herein.

11. Any dispute concerning this Temporary Use Permit shall be resolved by good faith, non-binding mediation between the City and Arctic Circle Wild Seafood, LLC. If such non-binding mediation shall not resolve all disputed matters, the City and Arctic Circle Wild Seafood, LLC agree to submit any unresolved disputes to binding arbitration (with a single arbitrator). This arbitration shall be the sole remedy for any and all disputes arising under this Temporary Use Permit and the decision of the arbitrator shall be the complete, final adjudication of any and all such disputes under this Temporary Use Permit. The site of any such arbitration shall be in Kotzebue, Alaska, at a location agreed upon by the City and Arctic Circle Wild Seafood, LLC.

Any arbitration shall be governed by Alaska's Revised Uniform Arbitration Act as set forth in A.S. 09.43.300 to A.S. 09.43.595. Damages, if any, awarded by an arbitrator shall be limited to non-tort, contract damages allowed by Alaska law, with full, reasonable fees and costs awarded to the prevailing party by the arbitrator, with the determination of prevailing party status governed by the Alaska Rule of Civil Procedure 82 and the Alaska case law developed under Alaska Rule of Civil Procedure 82.

**[Dated and Signed on Page 3 of 3]**

**TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**

Page 2 of 3

**CITY OF KOTZEBUE**


\_\_\_\_\_  
City Manager

DATED: \_\_\_\_\_

Attachment:

Exhibit "A" – ACWS Submittal

**ARCTIC CIRCLE WILD SEAFOOD, LLC**

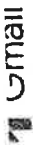
  
By: Michael J. Smith [Print Name]  
Its: Managing Director [Print Title]

DATED: May 28, 2024

**TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**

Page 3 of 3





**ACWS amended Temporary Use Permit, Paragraph 4, Page 1 of 3**

Message

Thu, Jul 27, 2023 at 6:43 P

Joe Evans <joe@jwevanslaw.com>  
"kotzebue57@gmail.com" <kotzebue57@gmail.com>, Nate Kotch <kotchservices@gmail.com>, Mike Scott <michael\_scott@comcast.net>

Nate and Mike,

As a 5-0 vote tonight, the City Council approved deleting the present Paragraph 4, Page 1 of 3, in the ACWS Temporary Use Permit and replace it with the following language, effective immediately:

***Due to the proximity of residential units, Arctic Circle Wild Seafood, LLC, shall use its best good faith efforts and best business practices to not conduct its fish buying operations from Midnight to 6:00am Sunday through Saturday from June 30th to August 21st and, shall use its best good faith efforts and best business practices to not conduct its fish buying operations from August 22nd to August 31st 10:00pm to 6:00am Sunday through Saturday once school starts. ACWS shall inform and work with its independent contractor commercial fishermen to effectuate this proviso to the maximum extent possible. In addition, to the maximum extent possible, ACWS shall use its best good faith efforts and best business practices to minimize the disruption caused by FBX pickup and loading of fish containers to transport to the airport outside of the hours noted above. How ACWS handles these requirements in the next six (6) weeks shall determine whether another TUP is issued next year for the 2024 commercial fishing season in Kotzebue and on what terms such a TUP shall be issued next year."***

Joe will prepare a formal, written amendment next week, but this is effective immediately.

Please email, text or call with any questions.

Joe Evans  
360) 907-5508 (cell)

[Joe@jwevanslaw.com](mailto:Joe@jwevanslaw.com)

From: Jessica Baldwin <JBaldwin@Kotzebue.org>  
Sent: Thursday, July 27, 2023 9:25 AM  
To: kotchservices@gmail.com michael\_scott@comcast.net; kotzebue57@gmail.com michael\_scott@comcast.net; kotzebue57@gmail.com <kotzebue57@gmail.com>  
Cc: Joe Evans <joe@jwevanslaw.com>  
Subject: Memo for City Council

Good Morning Nate and Mike,

I have attached a document that Joe drafted several conversations we have had in regard to the conversations we had following the special city council meeting.

Please note, that we recommended to the city council to amend the agenda to discuss this document today. The City Council meeting will start at 5:15PM at the city hall chambers. The call in number is 1-800-315-6338, passcode 49401#.

Thank you,

Jessica Baldwin  
City Manager  
City of Kotzebue  
58A Third Avenue  
PO Box 46, Kotzebue, AK 99752  
Work: 907-442-5101  
Cell: 907-412-3571  
Fax: 907-442-3742

Exhibit A to Resolution 24-37 on June 20, 2024 ROOM 110



ACWS memo to City Council re noise July 27 2023.pdf

26/27



**KOTZEBUE PLANNING COMMISSION  
RESOLUTION 24-05**

**A RESOLUTION OF THE CITY OF KOTZEBUE PLANNING COMMISSION  
RECOMMENDING TO THE CITY OF KOTZEBUE CITY COUNCIL THE APPROVAL  
OF ARCTIC CIRCLE WILD SEAFOOD LLC ("ACWS") TIDELANDS USE PERMIT FOR  
PURCHASING FISH CAUGHT WITHIN CITY-OWNED TIDELANDS**

**WHEREAS,** the City of Kotzebue ("City") owns surface and submerged Tidelands as delineated in Alaska Department of Natural Resources documents and State Patents "Exhibit B";

**WHEREAS,** Chapter 11.04, "Tideland Regulations," of the Kotzebue Municipal Code governs the use of City Tidelands;

**WHEREAS,** ACWS's operations are not directly located within the bounds of the City Tidelands "Exhibit B", ACWS will still be conducting business with commercial fisherman operating within City Tidelands;

**WHEREAS,** ACWS has submitted a request for a temporary non-exclusive use of City Tidelands to facilitate the purchase of salmon from local fishermen during the 2024 commercial season;

**WHEREAS,** ACWS has fulfilled the conditions precedent outlined in the Tidelands Permit application, including obtaining necessary permits from federal, state, and local governments "Exhibit A";

**WHEREAS,** the requirement for a formal appraisal of the value of non-exclusive use has been waived due to time sensitivity, with ACWS agreeing to negotiate an amount subject to City Council approval;

**Planning Commission  
Resolution 24-05  
June 13, 2024  
Page 2 of 2**

**NOW THEREFORE BE IT RESOLVED:**

1. The Tidelands Permit is hereby approved for Arctic Circle Wild Seafood LLC, subject to compliance with all terms and conditions set forth in the permit application and attached agreements (Exhibits A and C).
2. ACWS and its agents shall adhere to all federal, state, and local laws, regulations, and permit conditions applicable to activities conducted under this permit.
3. ACWS shall maintain the permitted area in a clean, safe condition and comply with spill reporting requirements as specified in the permit conditions.
4. This permit shall expire on August 31, 2024, unless extended by mutual, written agreement of the Parties.
5. The City Manager or their designee is authorized to execute the Tidelands Permit on behalf of the City of Kotzebue.

**PASSED AND APPROVED** by the Kotzebue Planning Commission on this 13<sup>th</sup> day of June, 2024.

**CITY OF KOTZEBUE  
Planning Commission**



**Ernest Norton, Chairman**

**ATTEST:**

  
**Sam Camp, Planning Director**





Arctic Circle  
Wild Seafood  
KOTZEBUE, ALASKA • PRODUCT OF U.S.A WILD

May 28, 2024

Ms. Tessa Baldwin  
Kotzebue City Manager

Dear Ms. Baldwin:

Please consider Arctic Circle Wild Seafood proposal to utilize tidelands within the city limits of Kotzebue and land use permits on City property. We will be doing business as Arctic Circle Wild Seafood (ACWS) and intend to again purchase salmon from fishermen during the upcoming commercial fishing season in July and August 2024.

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Cordially,

Michael J. Scott  
Managing Partner  
Arctic Circle Wild Seafood  
P.O. Box 226  
Kotzebue, AK 99752  
(907) 412-1526  
(206) 715-7804

Alaska Business License # 1057080

**Alaska Department of Commerce, Community, and Economic Development**  
Division of Corporations, Business, and Professional Licensing  
PO Box 110806, Juneau, AK 99811-0806

This is to certify that

**ARCTIC CIRCLE WILD SEAFOOD**

P.O. BOX 226, KOTZEBUE, AK 99752

owned by

ARCTIC CIRCLE WILD SEAFOOD LLC

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Julie Sande  
Commissioner

**State of Alaska**  
**Department of Commerce, Community, and Economic Development**  
**Corporations, Business, and Professional Licensing**

**Certificate of Organization**

The undersigned, as Commissioner of Commerce, Community, and Economic Development of the State of Alaska, hereby certifies that a duly signed and verified filing pursuant to the provisions of Alaska Statutes has been received in this office and has been found to conform to law.

ACCORDINGLY, the undersigned, as Commissioner of Commerce, Community, and Economic Development, and by virtue of the authority vested in me by law, hereby issues this certificate to

**Arctic Circle Wild Seafood LLC**



IN TESTIMONY WHEREOF, I execute the certificate and affix the Great Seal of the State of Alaska effective July 11, 2017.

Chris Hladick  
Commissioner

ARCTIC CIRCLE WILD SEAFOOD  
P.O. BOX 226  
KOTzebue, AK 99752





**RE: 2024 Independent Buyer Application Arctic Circle Wild Seafood**

1 message

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**Deehan, Rachel C (DFG)** <rachel.deehan@alaska.gov>

Fri, May 10, 2024 at 2:34 PM

To: Michael Scott <kotzebue57@gmail.com>

This is received.

Rachel Deehan  
Seafood Industry Technician  
907-465-6131

**From:** Michael Scott <kotzebue57@gmail.com>

**Sent:** Friday, May 10, 2024 11:22 AM

**To:** Deehan, Rachel C (DFG) <rachel.deehan@alaska.gov>

**Subject:** 2024 Independent Buyer Application Arctic Circle Wild Seafood

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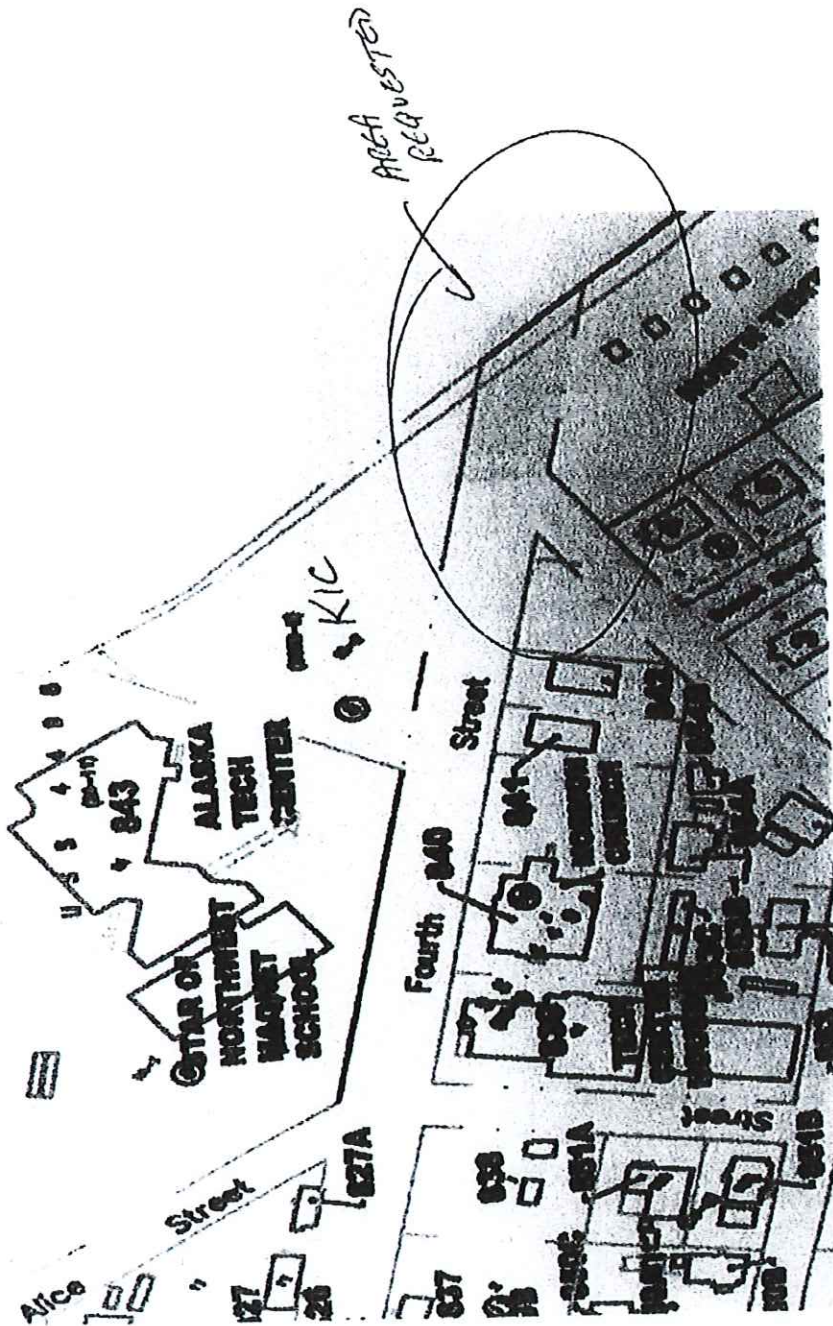
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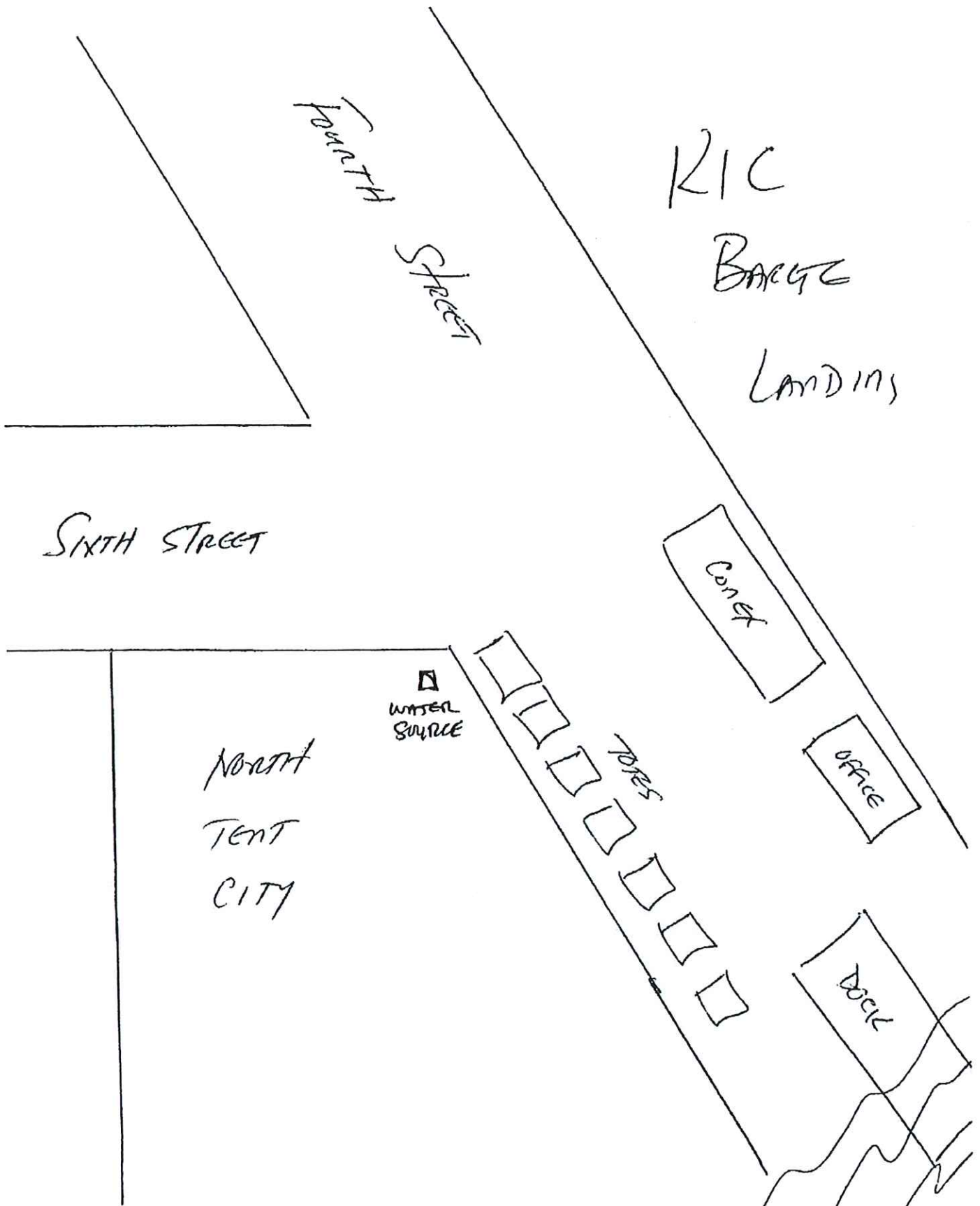
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Mike

Michael J. Scott  
Arctic Circle Wild Seafood, LLC  
P.O. Box 226  
Kotzebue, AK 99752  
(907) 412-1526  
(206) 715-7804

ACWS Fish Buying Station







**CITY OF KOTZEBUE  
TEMPORARY USE PERMIT  
FOR ARCTIC CIRCLE WILD SEAFOOD, LLC ("ACWS")  
PURSUANT TO KMC 3.12.120  
AND  
RESOLUTION NO.**

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  3. Arctic Circle Wild Seafood, LLC shall indemnify, defend and hold harmless the City, its employees, officials and/or agents from any and all claims, actions, fees, expenses, costs and demands of whatever nature or type caused by, related to or in any way associated with the granting of this Temporary Use Permit, Arctic Circle Wild Seafood, LLC's use of and/or Arctic Circle Wild Seafood, LLC's activities on or about the City properties identified herein.
  4. Arctic Circle Wild Seafood, LLC at the end of its use of the City's properties for the ~~2024~~ fishing season shall leave the City's properties in a safe and properly cleaned condition, restoring them to the condition in which the properties were found at the start of the use permit granted herein.
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- TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**

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8. Arctic Circle Wild Seafood, LLC warrants that the individual signing below on behalf of Arctic Circle Wild Seafood, LLC has the authority and permission of Arctic Circle Wild Seafood, LLC to sign this Temporary Use Permit and in so doing to bind Arctic Circle Wild Seafood, LLC to the terms of this Temporary Use Permit.

9. This Temporary Use Permit shall be subject to all applicable provisions of Title 29 of the Alaska Statutes and the Kotzebue Municipal Code, and all amendments thereto, judicial determinations thereof and case law thereunder.

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11. Any dispute concerning this Temporary Use Permit shall be resolved by good faith, non-binding mediation between the City and Arctic Circle Wild Seafood, LLC. If such non-binding mediation shall not resolve all disputed matters, the City and Arctic Circle Wild Seafood, LLC agree to submit any unresolved disputes to binding arbitration (with a single arbitrator). This arbitration shall be the sole remedy for any and all disputes arising under this Temporary Use Permit and the decision of the arbitrator shall be the complete, final adjudication of any and all such disputes under this Temporary Use Permit. The site of any such arbitration shall be in Kotzebue, Alaska, at a location agreed upon by the City and Arctic Circle Wild Seafood, LLC.

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**[Dated and Signed on Page 3 of 3]**

**TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**

Page 2 of 3

**CITY OF KOTZEBUE**

\_\_\_\_\_  
City Manager

DATED: \_\_\_\_\_

Attachment:

Exhibit "A" – ACWS Submittal

**ARCTIC CIRCLE WILD SEAFOOD, LLC**

*Michael Smith*  
\_\_\_\_\_  
By: *Michael Smith* [Print Name]  
Its: *Managing Partner* [Print Title]

DATED: *May 28, 2024*

**TEMPORARY USE PERMIT – ARCTIC CIRCLE WILD SEAFOOD, LLC**

Page 3 of 3



ACWS memo to City Council re noise July 27 2023.pdf  
267K

Exhibit B to Resolution 24-37 for June 20, 2024 RCCM Page 13 of 39



Thu, Jul 27, 2023 at 6:43 P



ACWS amended Temporary Use Permit, Paragraph 4, Page 1 of 3

Message

Joe Evans <joe@jivevanslaw.com>  
"kotzebue57@gmail.com" <kotzebue57@gmail.com>, Mike Scott <michael\_scott@comcast.net>

late and Miss,

As a 5-0 vote tonight, the City Council approved deleting the present Paragraph 4, Page 1 of 3, in the ACWS Temporary Use Permit and replace it with the following language, effective immediately:

**Due to the proximity of residential units, Arctic Circle Wild Seafood, LLC, shall use its best good faith efforts and best business practices to not conduct its fish buying operations from Midnight to 6:00am Sunday through Saturday from June 30th to August 21st and, shall use its best good faith efforts and best business practices to not conduct its fish buying operations from August 22nd to August 31st 10:00pm to 6:00am Sunday through Saturday once school starts. ACWS shall inform and work with its independent contractor commercial fishermen to effectuate this proviso to the maximum extent possible. In addition, to the maximum extent possible, ACWS shall use its best good faith efforts and best business practices to minimize the disruption caused by FBX pickup and loading of fish containers to transport to the airport outside of the hours noted above. How ACWS handles these requirements in the next six (6) weeks shall determine whether another TUP is issued next year for the 2024 commercial fishing season in Kotzebue and on what terms such a TUP shall be issued next year."**

will prepare a formal, written amendment next week, but this is effective immediately.

Please email, text or call with any questions.

Joe Evans  
360 | 981-8508 (cell)

[joel@jivevanslaw.com](mailto:joel@jivevanslaw.com)

From: Tessa Baldwin <TBaldwin@kotzebue.org>  
Sent: Thursday, July 27, 2023 9:25 AM  
To: kotzservices@gmail.com michael\_scott@comcast.net <kotzservices@gmail.com michael\_scott@comcast.net>; kotzebue57@gmail.com <kotzebue57@gmail.com>  
Cc: Joe Evans <joe@jivevanslaw.com>  
Subject: Memo for City Council

Good Morning Nate and Mike,

Please find attached a document that Joe drafted several conversations we have had in regard to the conversations we had following the special city council meeting.

Please note that we recommended to the city council to amend the agenda to discuss this document today. The City Council meeting will start at 5:15PM at the city hall chambers. The call in number is 1-800-315-6338, passcode 49401#.

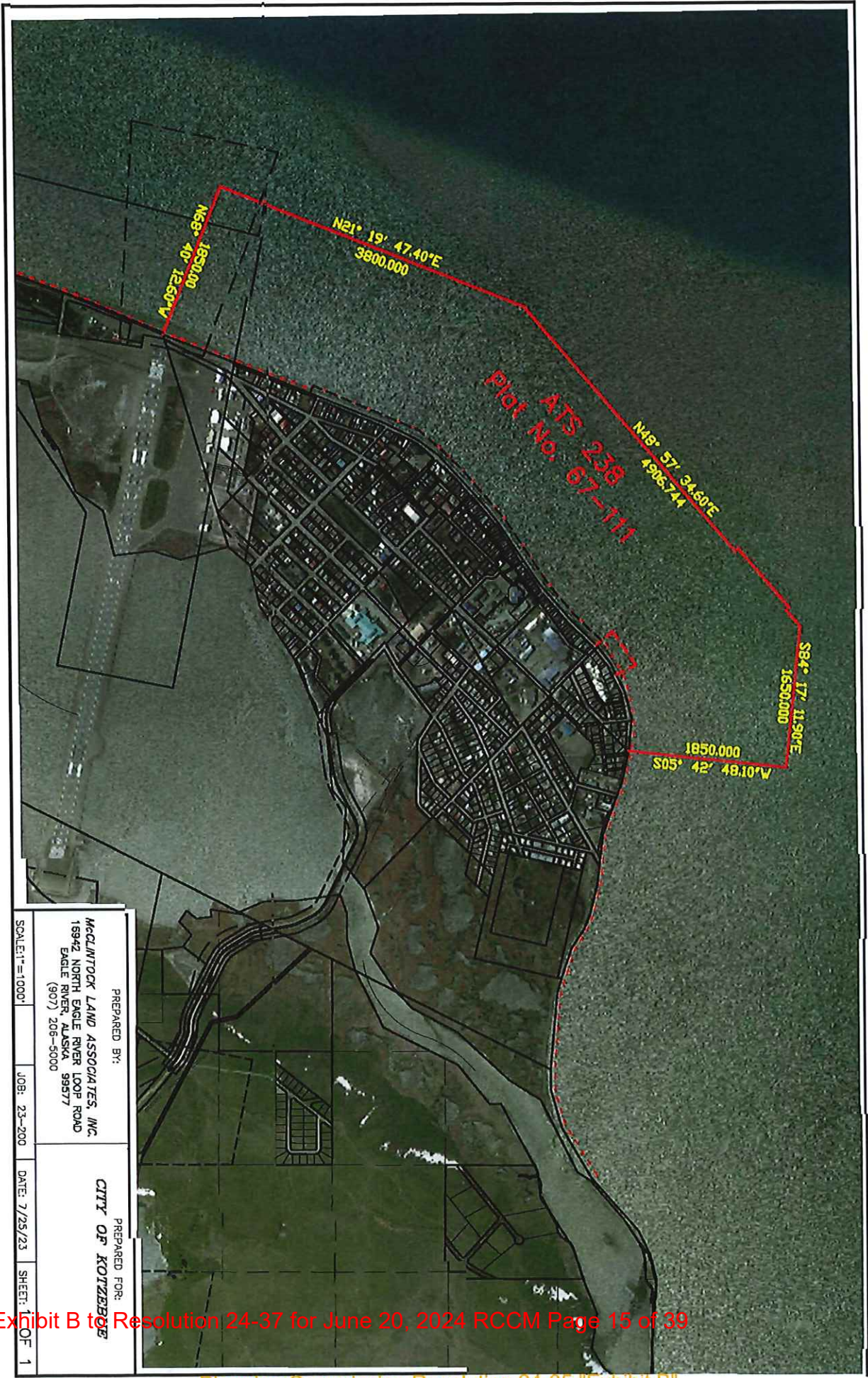
Thank you!

Tessa Baldwin  
City Manager  
City of Kotzebue  
53A Third Avenue  
PO Box 46, Kotzebue, AK 99752  
Work: 907-442-5101  
Cell: 907-412-3571  
Fax: 907-442-3742

Exhibit 24-31 for June 20, 2024 RDCM Page 14 of 39

Planning Commission Resolution 24-15 "Exhibit A"





PREPARED BY:  
**MCCLINTOCK LAND ASSOCIATES, INC.**  
 15942 NORTH EAGLE RIVER LOOP ROAD  
 EAGLE RIVER, ALASKA 99577  
 (907) 206-5000

PREPARED FOR:  
**CITY OF KOIZEBE**

SCALE: 1" = 1000'  
 JOB: 23-200  
 DATE: 7/25/23  
 SHEET: 1 OF 1





**KOTZEBUE PLANNING COMMISSION  
RESOLUTION 24-06**

**A RESOLUTION OF THE CITY OF KOTZEBUE PLANNING COMMISSION  
RECOMMENDING TO THE CITY OF KOTZEBUE CITY COUNCIL THE APPROVAL  
OF ARCTIC CIRCLE WILD SEAFOOD (ACWS) TEMPORARY LAND USE PERMIT  
FOR PURCHASING FISH CAUGHT WITHIN CITY-OWNED TIDELANDS**

**WHEREAS,** the Kotzebue Municipal Code ("KMC") 3.12.120 sets forth regulations to issue temporary use permits for City-Owned lands;

**WHEREAS,** Arctic Circle Wild Seafood, LLC ("ACWS") has applied for a temporary use permit to conduct fish buying operations during the 2024 fishing season on specified City-owned properties as detailed in Exhibit "A";

**WHEREAS,** ACWS has committed to indemnify, defend, and hold harmless the City from any claims or liabilities arising from activities conducted under this Temporary Use Permit;

**WHEREAS,** ACWS has agreed to restore the City's properties to their original condition at the conclusion of the permit term and acknowledges that the permit may be terminated at will by the City;

**WHEREAS,** ACWS has agreed to compensate the City as specified within ten (10) days of permit execution;

**WHEREAS,** ACWS shall be granted a non-exclusive, temporary use permit for its fish buying operations at the specified location, including use of a City water source under metered conditions;

**WHEREAS,** ACWS warrants the authority of its representative to enter into this agreement on behalf of the company;

**WHEREAS,** this Temporary Use Permit is subject to all applicable provisions of Title 29 of the Alaska Statutes and the Kotzebue Municipal Code;

**Planning Commission**

**Exhibit B to Resolution 24-37 for June 20, 2024 RCCM Page 16 of 39**

**NOW THEREFORE BE IT RESOLVED:**

1. The Temporary Use Permit for Arctic Circle Wild Seafood, LLC to conduct fish buying operations during the 2024 fishing season on specified City-owned properties, as described in Exhibit "A," is hereby approved.
2. ACWS shall adhere to all terms and conditions set forth in the Temporary Use Permit and accompanying documents.
3. This permit shall be effective from 06/20/2024 and shall expire no later than one hundred eighty (180) days thereafter, unless terminated earlier or extended by mutual agreement.
4. The City Manager or their designee is authorized to execute the Temporary Use Permit on behalf of the City of Kotzebue.

**PASSED AND APPROVED** by the Kotzebue Planning Commission on this 13<sup>th</sup> day of June, 2024.

**CITY OF KOTZEBUE**  
**Planning Commission**



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**Ernest Norton, Chairman**

**ATTEST:**



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**Sam Camp, Planning Director**

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### **3.12.120 Use permits and licenses.**

The city may, by city council resolution, issue use permits or licenses for use of city land, not to exceed one hundred eighty days. Such use permits or licenses may or may not be for consideration, but such use permits or licenses may be terminated at will by the city. Use permits and licenses may be issued without conforming to the requirements of this chapter for disposal of land, unless otherwise directed by the council.

(Ord. 86-5 § 1 (part), 1986).



**City of Kotzebue**  
**TIDELANDS PERMIT**  
**Arctic Circle Wild Seafood - Permittee**

The City of Kotzebue owns surface Tidelands and submerged Tidelands pursuant to, *inter alia*, Alaska Department of Natural Resources, Division of Lands, Interagency Land Management Transfer, ADL#19285, dated September 10, 1962, State of Alaska Patent, Tidelands No. 185, dated April 11, 1966, recorded at Book 40, Page 107, Noatak - Kobuk Recording District, Noatak - Kobuk Serial No. 66-219, A.T.S. 238 showing 395.208 acres and Alaska Statutes, Title 38, Public Lands. Copies of A.T.S. 238 and related documents are attached hereto as Exhibit "A" and incorporated herein by reference.

Chapter 11.04, "Tideland Regulations," of the Kotzebue Municipal Code ("KMC"), governs, *inter alia*, the use of, improvement of, rights-of-way, easements and resources reservation over, under and through the City of Kotzebue's Tidelands and KMC Chapter 11.04 is incorporated, in its entirety, herein by reference. This Tidelands Permit is issued pursuant to City of Kotzebue Resolution No. 18-08, dated August 17, 2017, a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

**Nature of Request for Temporary Non-Exclusive Use of Tidelands**

Arctic Circle Wild Seafood ("ACWS") will be buying salmon from local fishermen during the oncoming **2024** commercial season, as set forth in Exhibit "C" attached hereto and incorporated herein by reference.

**Conditions Precedent and Promissory Conditions**

As conditions to obtaining this TIDELANDS PERMIT, ACWS warrants and commits as follows:

1. ACWS shall obtain all necessary permits, if any, from the federal government, State of Alaska and local governments required for work in the waters in and around Kotzebue and present copies of said permits to Samuel Camp, Planning Director, City of Kotzebue, before any work is commenced in the Tidelands;
2. KMC 11.04.510, 11.04.630 and 11.04.640, normally would require ACWS to pay for an appraisal by MacSwain & Associates, LLC, Anchorage, Alaska for the value of the non-exclusive use of the City's surface Tidelands and the value so determined would be paid to the City. However, due to the time sensitive nature of this work, the requirement for a formal appraisal is hereby waived and it is agreed that ACWS will negotiate an amount to be paid to the City, subject *vel non* to City Council approval, for the temporary, non-exclusive use of the City of Kotzebue's Tidelands.

**CITY OF KOTZEBUE**

Arctic Circle Wild Seafood  
DRAFT Tidelands Use Permit No. 24-01  
Exhibit B to Resolution 24-37 for June 20, 2024 RCCM Page 19 of 39

Page 1 of 6

## PERMIT TERMS AND CONDITIONS

1. ACWS and/or its agent(s) warrants and commits that it and/or its agent(s) shall comply with all terms of the contracts/agreements/permits entered into/granted by the federal government, State of Alaska and local governments.
2. ACWS and/or its agent(s) shall comply with any and all applicable local, borough, state and federal laws. Failure to abide by any part of this Permit or violation of any pertinent provisions of the Kotzebue Municipal Code, Northwest Arctic Borough Code, Alaska Statutes, Alaska Administrative Code or federal laws or regulations, will be considered grounds for revocation of this Permit or denial of future permit requests and may result in fines or other penalties. This provision shall apply to all persons working under authority of this Permit.
3. All trash and human waste shall be properly disposed of in accordance with State, Northwest Arctic Borough and City of Kotzebue standards for disposal of refuse, human waste and chemicals.
4. All Permit activities shall utilize measures to minimize noise and nuisance affecting surrounding residential properties, including excessive noise, fumes, odors, glare, smoke, vibration, dust, litter, interference in any telephone, radio or television receivers, and/or significant line voltage fluctuation.
5. Equipment/watercraft used in the performance of the activities covered by this Permit shall not be serviced and fueled within the boundaries of the City's Tidelands. Equipment and vehicles must be monitored, daily, for hydraulic leaks. Equipment and vehicles are to be maintained so as not to cause any fuel spills and/or fluid leaks. Equipment shall not be abandoned.
6. ACWS and/or its agent(s) shall immediately notify the City of any damage to the waters and/or bottom of the City's Tidelands, including, but not limited to, environmental spills of oil or other chemicals.
7. ACWS and/or its agent(s) shall immediately notify the City (at least within 24 hours) of any change in the Permit plans and seek modification of the Permit. ACWS and/or its agent(s) shall suspend uses until approval is given by the Public Works Director. If the proposed action constitutes an emergency, ACWS and/or its agent(s) shall comply with directions from the Planning Director, or his Designee, for such emergency actions and shall make reasonable efforts to conduct modified uses in a manner that avoids or minimizes significant harm to the environment, consistent with the need to protect property and human life.

### **CITY OF KOTZEBUE**

Arctic Circle Wild Seafood



8. ACWS and/or its agent(s) are subject to all penalties and civil actions for violation of the Permit conditions and stipulations prescribed herein.
9. The Permittee shall allow the City and its representatives access to the permitted areas during the term of this Permit to conduct scheduled or unscheduled inspections or tests to determine compliance with this Permit or respond to emergency situations.
10. This Permit is for City Tidelands only and does not apply to other lands within the Kotzebue Sound not held in City ownership.
11. This Permit is not a property right. It is a temporary non-exclusive, authorization, revocable by the City for cause.
12. ACWS is responsible for obtaining authorizations required by other agencies for the permitted activity.
13. The City's primary contact person for this Permit is the Planning Director, or his Designee. The Planning Director may be contacted at the Public Works Building, at his direct-dial numbers of (907) 442-5203, via fax at (907) 442-2155 and/or via e-mail to [satkinson@kotzebue.org](mailto:satkinson@kotzebue.org).
14. ACWS assumes all responsibility, risk and liability for all activities of Permittee, its employees, agents, invitees, contractor, subcontractors or licensees directly or indirectly conducted in connection with this Permit, including environmental and hazardous substance risks and liabilities, whether accruing during or after the term of this Permit. Permittee shall defend, indemnify and hold harmless the City of Kotzebue, its employees and agents from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind or nature, including all attorney's fees and litigation costs, arising out of, in connection with, or incident to any act or omission by Permittee, its employees, agents, invitees, contractors, subcontractors or licensees, unless the sole proximate cause of the injury or damage is the negligence or willful misconduct of the City or anyone acting on the City's behalf. Within fifteen (15) days, Permittee shall accept any such cause or action or proceeding upon tender by the City. This indemnification shall survive the termination of the Permit.
15. This authorization is subject to all valid existing rights in and to the land under this authorization. The City makes no representations or warranties, whatsoever, either expressed or implied, as to the existence, number or nature of such valid existing rights.
16. Since this is a temporary, non-exclusive use permit for ACWS, the City reserves the right to grant additional authorizations to other third-parties for compatible uses on or adjacent

to the land under this authorization. However, any other users on or adjacent to the area of Tidelands being used by ACWS, shall not interfere with ACWS's salmon-buying activities with local fishermen during the **2024** commercial fishing season.

17. The area used for this Permit shall be left in a clean, safe condition acceptable to the Planning Director. The area shall be restored to a condition acceptable to the Planning Director.
18. This authorization is revocable immediately upon violation of any of its terms, conditions, stipulations, nonpayment of fees or upon failure to comply with any other applicable laws, statutes and regulations (federal, state and local).
19. To proceed in areas other than in the City Tideland Area, ACWS must have prior authorization from the Planning Director and may request this authorization as an amendment to this Permit.
20. All operations must be conducted in a manner that will ensure minimum conflict with other users of the area. There shall be no interference with free public use of City lands and waters. Public access may not be restricted without prior approval of the Planning Director.
21. The area subject to this Permit shall be maintained in a neat, clean and safe condition, free of any solid waste, debris or litter.
22. The use authorized by this Permit shall be limited to the City-owned tidelands. ACWS is responsible for accurately siting operations within this area. Any proposed activity outside the City-owned tidelands may require approval of other local, state and/or federal entities which shall be the sole responsibility of ACWS.
23. Secondary containment shall be provided for fuel or hazardous substances, as follows:
  - a. Container marking. All independent fuel and hazardous substance containers shall be marked with the contents and ACWS's name using paint or a permanent label.
  - b. Fuel or hazardous substance transfers. Secondary containment or a surface liner must be placed under all container or vehicle fuel tank inlet and outlet points, hose connections, and hose ends during fuel or hazardous substance transfers. Appropriate spill response equipment must be on hand during any transfer or handling of fuel or hazardous substances to respond to a spill of up to five (5) gallons. Trained personnel shall attend transfer operations at all times. Equipment refueling shall not occur within 100 feet of open bodies of water.



- c. Storing containers within 100 feet of bodies of water. Containers with a total capacity larger than 55 gallons that contain fuel or hazardous substances shall not be stored within 100 feet of a body of water.
- d. Exceptions. The Planning Director may, under unique or special circumstances, grant exceptions to this stipulation on a case-by-case basis. Requests for exceptions should be made to the Planning Director.
- e. Definitions.

"Containers" means any item that is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders and bags. Manifoldded tanks or any tanks in a series must be considered as single, independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

"Hazardous substances" are defined under A.S. 46.03.826(5) as: (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14)

"Secondary containment" means an impermeable, diked area or portable, impermeable, containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank.

"Surface liner" means any safe, non-permeable container (e.g., drip pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

- 24. The Permittee shall immediately notify the City, by phone, of any unauthorized discharge of oil or fuel to water, any discharge of hazardous substances (other than oil or fuel), and any discharge of oil or fuel greater than fifty-five (55) gallons on land. All fires and explosions must also be reported.

The DEC Spill Report Number is 1-800-478-9300. The City 24-hour number is 442-3351/3352. The ADF&G number in Kotzebue is 442-3420 and the ADF&G fax number in Kotzebue is 442-3420. DEC and ADF&G shall be supplied with all follow-up incident reports. See, ADEC/SPAR "Report Oil and Hazardous Substance Spills," attached hereto as Exhibit "D."

**CITY OF KOTZEBUE**

Arctic Circle Wild Seafood

Copies of all such written spill reports shall be provided to the Planning Director at the e-mail addresses and fax number listed above in paragraph 13.

- 25. This Permit contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Permit shall have no force or effect except in a subsequent written modification, signed by the Party to be charged.
- 26. This Permit shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto.
- 27. This Permit shall be interpreted according to the laws of the State of Alaska. Any litigation involving this Permit shall be exclusively in Superior Court, Second Judicial District, at Kotzebue.
- 28. All Parties to this Permit have participated in the drafting of this Permit. Hence this Permit shall not be construed in favor of one Party against another Party.
- 29. This Permit shall expire **August 31, 2024**, unless extended by mutual, written agreement of the Parties.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Kotzebue, Alaska.

**CITY OF KOTZEBUE**

**ARCTIC CIRCLE WILD SEAFOOD**

\_\_\_\_\_  
Tessa Baldwin  
City Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Position: \_\_\_\_\_

## Chapter 11.04 TIDELAND REGULATIONS

Sections:

### *Article I. Definitions*

#### **11.04.010 Accretion.**

"Accretion" means the gradual and imperceptible addition of new land to old by the natural deposition of sediments, i.e., sedimentation.

(Prior code Ch. 14 § 13-4(b)(30)).

#### **11.04.020 Act.**

"Act" means the Alaska Land Act as now constituted or as hereafter amended.

(Prior code Ch. 14 § 13-4(b)(l)).

#### **11.04.030 Apportionment survey cost.**

"Apportionment survey cost" means that cost prorated to each subdivided tide and submerged land tract.

(Prior code Ch. 14 § 13-4(b)(37)).

#### **11.04.040 Coastline.**

"Coastline" means the line of ordinary low water along any portion of Kotzebue Sound and is the line marking the seaward limit of inland waters.

(Prior code Ch. 14 § 13-4(b)(23)).

#### **11.04.050 Commissioner.**

"Commissioner" means the Commissioner of the Department of Natural Resources of Alaska.

(Prior code Ch. 14 § 13-4(b)(3)).

#### **11.04.060 Director.**

"Director" means the Director of the Divisions of Lands of the Department of Natural Resources.

(Prior code Ch. 14 § 13-4(b)(4)).



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#### **11.04.070 Division.**

"Division" means the Division of Land within the Department of Natural Resources.

(Prior code Ch. 14 § 13-4(b)(5)).

#### **11.04.080 Fair market value.**

"Fair market value" means the highest price, described in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller willing but not forced to sell and a buyer willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

(Prior code Ch. 14 § 13-4(b)(31)).

#### **11.04.090 Fill.**

"Fill" means earth, gravel, rock, sand or other similar materials placed upon tide or contiguous submerged lands for the purpose of elevating the lands above the high-water line for a specific useful purpose. The placement of earth, gravel, rock, sand or other similar materials on tide or contiguous submerged land solely for the purpose of spoils disposal and thereafter abandoned and not used for any beneficial purpose shall not be considered fill.

(Prior code Ch. 14 § 13-4(b)(II)).

#### **11.04.100 Final tideland plat.**

"Final tideland plat" means that survey plat compiled of the tide and submerged lands under the direction and authority of the Division of Lands and the city that shows the subdivision of the tide and submerged lands and upon which each subdivided tract is identified by a letter and a number.

(Prior code Ch. 14 § 13-4(b)(34)).

#### **11.04.110 Harbor line.**

"Harbor line" means that line fixed by the Secretary of the Army which is the limit to which piers, wharves, bulkheads or other work may be extended in navigable waters without further authorization.

(Prior code Ch. 14 § 13-4(b)(27)).

#### **11.04.120 Improvements.**

"Improvements" means buildings, wharfs, piers, drydocks, and other similar types of structures permanently fixed to the tide or contiguous submerged lands that were constructed and/or maintained by the applicant for business, commercial, recreation, residential or other beneficial uses or purposes. In no event shall fill be considered a permanent improvement when placed on the tidelands solely for the purposes of disposing of waste or spoils. However, fill material actually utilized for beneficial purposes by the applicant shall be considered a permanent improvement.

(Prior code Ch. 14 § 13-4(b)(10)).

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**11.04.130 Land.**

"Land" means all tide and submerged lands under jurisdiction of the city.  
(Prior code Ch. 14 § 13-4(b)(6)).

**11.04.140 Mean high tide.**

"Mean high tide" means the tidal datum plane of the average of all the high tides as may be or has been established by the United States Coast and Geodetic Survey.  
(Prior code Ch. 14 § 13-4(b)(24)(part)).

**11.04.150 Mean high water line.**

"Mean high water line" means the intersection of the datum plane of mean high water with the shore.  
(Prior code Ch. 14 § 13-4(b)(24)(part)).

**11.04.160 Mean lower low water.**

"Mean lower low water" shall be interpreted as the tidal datum plane of the average of the lower of the two low waters of each day as has or may be established by the United States Coast and Geodetic Survey.  
(Prior code Ch. 14 § 13-4(b)(26)).

**11.04.170 Mean low water.**

"Mean low water" shall be interpreted as the tide datum plane of the average of the low tides as has or may be established by the United States Coast and Geodetic Survey.  
(Prior code Ch. 14 § 13-4(b)(25)).

**11.04.180 Natural resources.**

"Natural resources" includes, without limiting the generality thereof, oil, gas and all other minerals, but does not include fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp and other marine, animal, and plant life, or water power, or the use of water for the production of power.  
(Prior code Ch. 14 § 13-4(b)(29)).

**11.04.190 Occupant.**

"Occupant" means any person as defined herein, or his successor in interest, who actually occupied for any business, residential or other beneficial purpose tidelands or tidelands and submerged lands contiguous thereto, within the corporate boundaries of the city on or prior to January 3, 1959, with substantial, permanent improvements. The holder of a permit of clearance in respect to interference with navigation, or of special use permit from a government agency will not qualify as an occupant unless such entry on the land had, through



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exercise of reasonable diligence, resulted in actual occupancy and substantial permanent improvements, as hereinafter mentioned. No person shall be considered an occupant by reason of having:

- A. Placed a fish trap in position for operation or storage upon the tide, shore or submerged land;
- B. Placed a setnet or piling therefor, or any other device or facility for the taking of fish;
- C. Placed piling or dolphins for log storage or other moorage;
- D. Placed floats or vessels upon the tide, shore or submerged land;
- E. Placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or contiguous or submerged land; or
- F. Claimed the land by virtue of some form of constructive occupancy. Where land is occupied by a person other than the owner of the improvements thereon, the owner of the improvements shall, for the purpose of these regulations, be considered the occupant of such lands.

(Prior code Ch. 14 § 13-4(b)(8)).

#### **11.04.200 Occupied or developed.**

"Occupied or developed" means the actual use, control and occupancy, but not necessarily residence, of the tide and contiguous submerged land by the establishment thereon of substantial permanent improvements.

(Prior code Ch. 14 § 13-4(b)(9)).

#### **11.04.210 Permit preference.**

"Permit preference" means that privilege of the upland owner to acquire first choice over other nonpreference-right claimants to a permit for like use and enjoyment of the city-owned tide or contiguous submerged lands abutting his property.

(Prior code Ch. 14 § 13-4(b)(18)).

#### **11.04.220 Person.**

"Person" means any person, firm, corporation, cooperative, association, partnership, or other entity legally capable of owning land or an interest therein.

(Prior code Ch. 14 § 13-4(b)(7)).

#### **11.04.230 Pierhead line.**

"Pierhead line" is defined as a line fixed by the Corps of Engineers of the Department of the Army that is parallel to existing line of mean low tide at such distance offshore from the line of mean low tide that the pierhead line shall encompass, to the landward, all stationary, manmade structures (but shall not encompass any part of breakwaters, bridges or piers used for vessel dockage which part extends beyond such a parallel line marking the seaward extremity of other manmade structures) which were in existence as of February 1, 1957, to seaward of the city.

(Prior code Ch. 14 § 13-4(b)(28)).

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#### **11.04.240 Preference right.**

"Preference right," subject to the classifications thereof established hereafter, means the right of an occupant to acquire by grant, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in these regulations, any tract or tracts of tide-land, or tideland and submerged land contiguous thereto, occupied or developed by such occupancy on and prior to January 3, 1959.

(Prior code Ch. 14 § 13-4(b)(14)).

#### **11.04.250 Preference right, class I.**

"Class I preference right" means the right that shall be extended to persons who occupied and developed tide and contiguous submerged lands seaward of the city on and prior to September 7, 1957, after executing a waiver to the state and the city of all rights such occupancy may have had pursuant to Public Law 85-303. Upon execution of the waivers, such persons or their successors in interest have the right to acquire such occupied and developed tide and contiguous submerged land from the city for a consideration not in excess of the cost of survey and transferring and conveying title.

(Prior code Ch. 14 § 13-4(b)( 15)).

#### **11.04.260 Preference right, class II.**

"Class II preference right" means the right that shall be accorded to class I preference right claimants who refuse to execute a waiver to the state and city of any rights such occupants may have acquired pursuant to Public Law 85-303. It is mandatory for the city to honor the application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior, the Governor and the city clerk maps showing the pierhead line established by the Corps of Engineers with respect to the tract granted.

(Prior code Ch. 14 § 13-4(b)(16)).

#### **11.04.270 Preference right, class III.**

"Class III preference right" means the preference right extended to persons who occupied and developed tidelands after September 7, 1957, and who continued to occupy the same on January 3, 1959. Such persons, or their successors in interest, have the right to acquire such occupied and developed tidelands for a consideration not in excess of the cost of appraisal, administering, and transferring title, plus the appraised fair market value thereof, exclusive of any value occurring from improvements or development, such as fill material, buildings or structures thereon.

(Prior code Ch. 14 § 13-4(b)(17)).

#### **11.04.280 Reclaimed or constructed tide or contiguous submerged lands.**

"Reclaimed or constructed tide or contiguous submerged lands" means those lands resulting by purposeful filling of tide or contiguous submerged lands.

(Prior code Ch. 14 § 13-4(b)(13)).

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**11.04.290 Shorelands.**

"Shorelands" means all lands which are covered by nontidal waters that are navigable under the laws of the United States up to ordinary high water mark as heretofore or hereafter modified by natural accretion, erosion, or reliction.

(Prior code Ch. 14 § 13-4(b)(20)).

**11.04.300 Submerged lands.**

"Submerged lands" means those lands covered by tidal waters between the line of mean low water and seaward to a distance of three geographical miles, or as may hereafter be properly claimed by the city.

(Prior code Ch. 14 § 13-4(b)(22)).

**11.04.310 Substantial permanent improvement.**

"Substantial permanent improvement" has the same meaning as improvements as defined in Section 11.04.120.

(Prior code Ch. 14 § 13-4(b)(12)).

**11.04.320 Tideland review committee.**

"Tideland review committee" means that committee appointed by the city council to decide on matters pertaining to the administration, adjudication, and disposal of tideland preference right applications.

(Prior code Ch. 14 § 13-4(b)(36)).

**11.04.330 Tidelands.**

"Tidelands" means those lands which are periodically covered by tidal waters between the elevation of mean high and mean low tides.

(Prior code Ch. 14 § 13-4(b)(21)).

**11.04.340 Upland owner.**

"Upland owner" means that owner whose upland property abuts the line of mean high tide.

(Prior code Ch. 14 § 13-4(b)(19)).

***Article II. General Provisions***

**11.04.350 Scope of provisions.**

The city, pursuant to AS 38.05.320, adopts the following regulations governing the filing and processing of applications, publications of notices, determination of preference rights, and the adjudication of disputes between



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claimants concerning tidelands, the title to which has been conveyed or hereafter may be conveyed to the city by the state.

(Prior code Ch. 14 § 13-1).

#### **11.04.360 Applicability-Short title.**

All tide and contiguous submerged lands within or seaward of the boundaries of the city (except those provided for hereafter) from the meander line as established on ATS 238 and seaward to a line agreed upon by the city and the state and shown on ATS 238. These regulations pertain to the use and disposal of city-owned tide and contiguous submerged land. The regulations may be referred to as the "Kotzebue Tidelands Regulations."

(Prior code Ch. 14 § 13-2).

#### **11.04.370 Statutory authority.**

These regulations are adopted by the city council pursuant to authority vested in that body by AS 29.48.010 et seq.

(Prior code Ch. 14 § 13-3).

#### **11.04.380 Federal laws implemented.**

These regulations implement, interpret, and apply the provisions of the Alaska Land Act concerning use and disposal of tidelands and related matters and extend to and include the applicable provisions of section 6 of Public Law 85-508 (71 Stat. 330), admitting the state to statehood in the United States of America and applicable provisions of the act of March 3, 1899, pertaining especially to establishment of harbor lines, as well as applicable provisions of Public Law 85-303 (31-Stat. 623).

(Prior code Ch. 14 § 13-4(a)).

#### **11.04.390 City ownership.**

Except as otherwise provided herein, the city, by virtue of AS 38.05.320 (b), and Tideland Patent No. \_\_\_\_\_ issued \_\_\_\_\_ recorded in Vol. \_\_\_\_\_, and any other patents hereafter issued to it, reserves and has succeeded to all right, title, and interest of the state in tide and submerged lands lying seaward of the city, including lands, improvements, reclaimed lands or natural resources in all lands up to the original GLO meander line of town-site survey U.S. Survey No. 2863A and seaward to the Director's Line as defined in said Tideland Patent No. \_\_\_\_\_ or any succeeding patents; provided, however, that those lands and rights therein lawfully vested in others by Acts of Congress prior to January 3, 1959 shall not be infringed upon; and provided further, that title to natural resources therein shall be reserved to the state until such time as the state may convey such title to the city.

(Prior code Ch. 14 § 13-5).

#### **11.04.400 Protection of fish and game.**

Prior to any construction or development by any persons or governmental agency that will use, divert, obstruct, pollute, or utilize any of the waters of the state or materials from such water areas, the Commissioner of the Alaska Department of Fish and Game shall be notified and a letter of approval obtained by the applicant pursuant to AS 16.05.870.

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(Prior code Ch. 14 § 13-6).

**11.04.410 Herring spawn covenant.**

The lease or sale of any city tide and submerged lands shall contain a restrictive covenant pursuant to AS 16.10.160 as now or as hereafter amended.

(Prior code Ch. 14 § 13-7).

**11.04.420 Resources reservation—Form.**

Each and every contract for the sale, lease, or grant of, and each deed to city tide and contiguous, submerged land, properties, or interest therein, made under the provisions of this chapter, shall be subject to a reservation to the city or to the state, whichever shall be entitled thereto, which shall be substantially in the following form:

The party of the first part, City, hereby expressly saves, excepts, and reserves out of the grant hereby made unto itself (or to the State of Alaska) its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself (or to the State of Alaska), its lessees, successors, and assigns forever the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, and fossils; and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, power-lines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as foresaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

(Prior code Ch. 14 § 13-8).

**11.04.430 Resources reservation—Exercise—Damages.**

No rights shall be exercised under the reservation set out in Section 11.04.420, by the city or the state of their lessees, successors, or assigns, until provision has been made by the city or the state or their lessees, successors, or assigns, to pay to the owner of the land upon which the rights herein reserved to the city or the state or their lessees, successors, or assigns are sought to be exercised, full payment for all damages sustained by the owner by reason of entering upon the land; provided that, if the owner for any cause whatsoever refuses or neglects to settle the damages, the city or the state or their lessees, successors, assigns, or any applicant for a lease or contract from the city or the state for the purpose of prospecting for valuable minerals or option contract or lease for mining coal, or a lease for extracting petroleum or natural gas, shall have the right, after posting a surety bond with the city council or the Director, as the case may be, in a company qualified to do business in Alaska and in a form as determined by the city council or the Director, as the case may be, after due notice and opportunity to be heard, to be sufficient in amount and security to secure the owner full payment for all such

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damages, to enter upon the land in the exercise of said reserved rights, and shall have the right to institute such legal proceedings in a court of competent jurisdiction wherein the land is situated, as may be necessary to determine the damages which the surface lessee of such lands may suffer.

(Prior code Ch. 14 § 13-9).

#### **11.04.440 Federal reservation.**

The following tidelands and contiguous submerged lands are reserved pursuant to section 3, Public Law 85-303 (71 Stat. 623) 1957: All tracts or parcels of land, together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from the Territory or State of Alaska or from any party in whom title has vested under the laws applicable to the territory or state, or the law of the United States, all lands expressly retained by or ceded to the United States, all land acquired by the United States by gift or by proceedings under eminent domain, all lands filled in, built up, or otherwise reclaimed by the United States for its own use as long as so used, and any rights that the United States has in lands presently and actually occupied by the United States under claim or rights.

(Prior code Ch. 14 § 13-10).

#### **11.04.450 Regulation of structures to harbor line.**

The city shall have authority pertaining to the construction and placement by itself or by others of solid fill and/or open pile structures that will extend to the harbor line as established by the U.S. Army, Corps of Engineers, except as provided in sections 10 and 11 of the River and Harbor Act of 1899 (30 Stat. 1151; 33 U.S.C. 403 and 404).

(Prior code Ch. 14 § 13-11).

### ***Article III. Regulations***

#### **11.04.460 Final tideland plat designated.**

The final tideland survey plat showing completed subdivision and monumentation and signed by the city clerk and the Director shall be known as Final Tideland Plat ATS 283. The final plat shall serve as the basis upon which all tideland preference right disposals shall be made.

(Prior code Ch. 14 § 13-12).

#### **11.04.470 Survey proportionment cost defined.**

The survey cost as agreed upon by the claimants, council, and Director of Natural Resources.

(Prior code Ch. 14 § 13-13).

#### **11.04.480 Notice of sale, grant or lease.**

Tideland and contiguous submerged lands, as well as any material therefrom owned by the city, shall be sold, granted, leased, or otherwise disposed of only through action of the city council. Before such lands or any interest therein is disposed of, the city clerk shall post a notice for three consecutive weeks preceding the time of disposal,

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as stated in the notice, in at least two common posting places. The sale, lease, or disposal of lands shall be held not less than one week nor more than three weeks following the last date of the posted notice. The notice shall set forth the following:

- A. The name and address of person, persons, corporation, or agencies requesting the sale, grant, lease, or interest therein;
- B. The location and description of the lands or interest therein and the improvements thereon;
- C. The preference or preference right claimed, if any, and the length of time including dates the claimant occupied the land;
- D. The date, time and place, and the general terms, including the minimum bid, if any, of the sale, lease, or other disposal;
- E. The dates of the advertisement or posting.

(Prior code Ch. 14 § 13-14).

#### **11.04.490 Protest of sale, grant or lease.**

Anyone may file a protest with respect to the grant, sale, lease, or other disposal of tidelands or materials thereon or therein. Such protest shall be in writing and contain a statement as to the nature and reason for the protest. Each protest so made shall be filed with the city clerk during but not later than the last date provided in the past notice. The party protesting shall be required to notify by registered or certified mail the party whose action he is protesting. The postmark date of the addressee's post office will govern. Failure to protest shall constitute a waiver.

(Prior code Ch. 14 § 13-15).

#### **11.04.500 Review of protest.**

The city clerk shall, upon receiving a protest, indicate upon it the time and date received, and then submit it to the city council, which shall review the protest. The city council shall notify the protestant of its findings within thirty days of the date the protest was received by the city clerk.

(Prior code Ch. 14 § 13-16).

#### **11.04.510 Deposit for appraisal, advertising.**

The city council may require applicants to deposit with the city clerk a sum sufficient to cover all, or any portion of, anticipated costs of appraisal and/or advertisement. Such deposit shall be made within thirty calendar days after request for deposit. Failure to comply shall result in cancellation of the application. Any sum above the actual cost shall be returned to the applicant. In the event the land applied for is disposed of to another than the applicant within thirty days after offering, the successful applicant shall be required to pay any survey, appraisal or advertising cost, and the original deposit will be returned to the depositor. If the depositor cancels his application, or fails to accept the contract or title when offered by the city, the deposited money shall be forfeited; but, if the city does not grant the application, all sums in excess of costs incurred shall be refunded. It shall be the responsibility of the city, following the receipt of any deposit required, to perform or have performed any appraisal and/or advertisement required or deemed necessary.

(Prior code Ch. 14 § 13-17).

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**11.04.520 City's right of entry.**

The city, through its authorized representatives, shall have the right to enter upon any city-held tidelands that are leased, or upon which a permit was granted, to make any and all examinations or investigations that are deemed necessary.

(Prior code Ch. 14 § 13-18).

**11.04.530 Preference right filing deadline.**

An occupant claiming a class I, class II or class III preference right may make, and the city will accept, applications for preference rights at any time during normal working hours within two years from the effective date of the 1963 ordinance adopting these regulations. Any preference right for which an application is not filed within this period will be lost.

(Prior code Ch. 14 § 13-19).

**11.04.540 Waste or injury to land.**

It is unlawful for any person to commit waste or other injury upon city-owned tide and contiguous submerged land, and the person offending shall, in addition to being civilly liable for any damage caused, upon conviction be punished in accordance with this code.

(Prior code Ch. 14 § 13-20).

**11.04.550 Additions to land occupied or developed.**

In approving any application for a preference right, the city shall include as part of the tract conveyed, and in addition to the occupied or developed lands, such additional tide and contiguous submerged lands as shall be reasonably necessary, in the opinion of the tideland review committee, for the occupant's use and enjoyment of the occupied or developed land; provided, however, that any such conveyance shall not include an area which would unjustly deprive any other applicant from reasonable use and enjoyment of the lands for which he applies or any area which would interfere with navigation.

(Prior code Ch. 14 § 13-21).

**11.04.560 Preference right application— Submittal.**

All persons claiming a preference right to any tideland tract shown on the final tideland plat ATS 238 shall submit an application to the city clerk in a form approved by the tideland review committee.

(Prior code Ch. 14 § 13-22).

**11.04.570 Preference right application—Approval or disapproval.**

Each complete preference right application submitted to the city clerk shall be forwarded to the tideland review committee. The tideland review committee through its chairman may request the applicant to submit additional information or proof of ownership as deemed necessary. The tideland review committee shall, within sixty days from the date of the application is received by the city clerk, notify the city council of its approval or

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disapproval of the application. If the application is approved, the tideland review committee shall notify the city council of all moneys owed the city by the applicant which pertains to the tideland application, and he shall then recommend that a resolution be passed conveying the tract to the applicant. If the application is not approved, or if it is determined that the applicant possesses a different preference right than that claimed, the tideland review committee shall so notify the applicant by registered or certified mail and state its reasons for disapproval. The tideland review committee shall then advise the city council.

(Prior code Ch. 14 § 13-23).

#### **11.04.580 Payment—Class I preference right.**

Upon approval of each class I preference right application, the tideland review committee shall notify the applicant of all moneys owed the city pertaining to the tideland application, including, but not limited to, the applicant's proportionate share of the survey cost. The proportionment of the survey cost shall be computed as stipulated in Section 11.04.470. Upon receipt of notice from the tideland review committee, the applicant shall have thirty days to make payment or enter into a purchase agreement as set forth in Section 1 1.04.660. If payment is not made, or a purchase agreement is not entered into within the thirty-day period, the application shall be voidable as the city's option.

(Prior code Ch. 14 § 13-24).

#### **11.04.590 Payment—Class III preference right.**

Upon approval of each class III preference right application, the tideland review committee shall notify the applicant of all moneys owed the city pertaining to the tideland application including, but not limited to, the fair market value of the tideland tract and the applicant's proportionate share of the survey cost. The pro-portionment of the survey cost shall be computed as stipulated in Section 11.04.470. If payment is not made, or purchase agreement is not entered into within thirty days, the application shall be voidable at the city's option.

(Prior code Ch. 14 § 13-25).

#### **11.04.600 Appeal—Right before city council.**

Any action taken by the tideland review committee may be appealed to the city council. The city council shall render its decision within sixty days from the date the appeal is submitted. Any person shall have the right to appeal in person before the city council or present his views in writing or be represented.

(Prior code Ch. 14 § 13-26).

#### **11.04.610 Appeal—Requirements.**

Any appeal submitted to the city council must:

- A. Be filed within thirty days after receipt of notice of the action by the tideland review committee;
- B. Be filed at the office of the city clerk;
- C. Specify the action or actions to be reviewed by the city council; and
- D. Specify the grounds urged for the reversal or modification of the action.

(Prior code Ch. 14 § 13-27).

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**11.04.620 Appeal—Decision.**

The city council shall, within sixty calendar days after receipt of the notice of appeal, render its decision, which shall be final so far as the city is concerned, but without prejudice to any other remedy or remedies the applicant may have.

(Prior code Ch. 14 § 13-28).

**11.04.630 Appraisal—Appraiser—Basis.**

Appraisal of the tract shall be made by a qualified appraiser to be appointed by the tide-land review committee. Such appraisal to be made on the basis of fair market value of the tidelands exclusive of any value resulting from improvements or developments, such as fill material, buildings, or structures thereon.

(Prior code Ch. 14 § 13-29).

**11.04.640 Appraisal—Cost.**

The cost of appraisal shall be borne by the applicant with the fee to be determined by tideland review committee.

(Prior code Ch. 14 § 13-30).

**11.04.650 Appraisal—Deposit.**

Each class III preference right claimant shall deposit with the city clerk the sum of fifty dollars to cover the cost of appraisal. Any amount exceeding this shall be charged to the applicant, and any surplus shall be returned to him.

(Prior code Ch. 14 § 13-31).

**11.04.660 Purchase agreement—Terms.**

Persons eligible to receive tideland conveyance from the city may enter into a purchase agreement. Purchase agreements shall require the applicant to pay to the city according to a payment schedule that shall be agreed upon between the purchaser and the city. However, in no event shall the final payment under the agreement be made beyond a date that is within five years of the date the city received patent.

(Prior code Ch. 14 § 13-32).

**11.04.670 Purchase agreement—Scope.**

Purchase agreements shall be allowed for only the payment of the fair market value of the tide-land tract and for the proportionment cost of survey.

(Prior code Ch. 14 § 13-33).

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**11.04.680 Boundary relocation agreements.**

If two or more qualified preference right claimants agree to a boundary relocation. Approval of the tideland review committee and concurrence of the Director of the Division of Lands must be obtained by letter. All independent surveys shall be performed by a registered engineer or surveyor, and the total cost shall be borne by the claimants. The final plat shall conform to the requirements of the State of Alaska Tideland Review Committee and concurred in by the Director of the Division of Lands.

(Prior code Ch. 14 § 13-34).

**11.04.690 Conveyance of title.**

When all requirements have been satisfied by the applicant, the city council shall direct the city clerk to convey title.

(Prior code Ch. 14 § 13-35).

**11.04.700 Disposition of nonpreference right tidelands.**

When in the best interest of the city, the city council may grant leases or permits for the use of city-owned tidelands. At no time will tidelands be sold without the consent of the citizens of the community in a general municipal election.

(Prior code Ch. 14 § 13-36).

**11.04.710 Leases.**

City-owned tide and submerged land shall be leased in accordance with the rules established by the city council. In addition to any requirements there set forth, the applicant shall submit a development plan that shall state:

- A. The purpose of the proposed construction or improvement;
- B. The type of construction;
- C. The date construction will begin and the estimated date of completion; and
- D. Any other data, survey plats, or information deemed necessary by the city council.

(Prior code Ch. 14 § 13-37).

**11.04.720 Permits—Use or improvement—Eligibility.**

The city council may issue permits for the use and/or improvements of city-owned tide-lands. The council shall give such preference to the use of the land as will be of greatest economic benefit to the city, provided that first preference shall be granted to the upland owner over other nonpreference applicants for the use of tideland and contiguous submerged land seaward of the upland property and which is needed by such owner for the purpose or purposes for which it may be granted.

(Prior code Ch. 14 § 13-38).



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**11.04.730 Permits—Application—Decision.**

Application for a tideland permit shall be submitted to the city clerk. The city clerk shall submit the application to the city council for its approval or disapproval, whereupon the council may, with or without a public hearing or posted notice, grant or reject the requested permit.

(Prior code Ch. 14 § 13-39).

**11.04.740 Permits—Duration—Renewal, revocation—Disposition of improvements.**

- A. Permits issued shall not exceed ten years in duration, but are renewable at the option of the city.
- B. All permits shall be revocable when used contrary to the conditions under which they are granted, or when council in its judgment determines that the best interest of the city would serve by revocation.
- C. If any permit expires or is revoked, all improvements placed on the tide or contiguous lands shall be removed by the permittee within sixty days; provided, however, that the city council may extend the time for removing such improvements in cases where hardship is shown. A permittee may, with the consent of the city council, sell his improvements to any succeeding permittee. Any improvements or chattels having an appraised value of ten thousand dollars which are not removed within the time allowed, shall be sold at public auction and the net proceeds thereof, if any, paid to the permittee after paying all expenses of the sale and charges due to the city. If there are no other bidders, the city may bid on the property for the total amount of the permittee's indebtedness to the city. Any improvements having a value of less than ten thousand dollars which are not removed within the time allowed shall revert to and become the absolute property of the city.

(Ord. 79-104 § 1, 1979: prior code Ch. 14 § 13-40).

**11.04.750 Permits—Rights-of-way and easements.**

Permits may be issued by the city council for utility lines and services of all types and for necessary rights-of-way. Such permits shall be revocable at the option of the city if permittee fails to comply with requirements of the permit.

(Prior code Ch. 14 § 13-41).

**11.04.760 Free use or purchase of materials.**

Applications for the free use or the purchase of material on city-owned tidelands or contiguous submerged lands shall be submitted to the city council, and the city council shall determine the conditions of disposal; provided, that, when such disposals are deemed not in the best interest of the city, the city council shall reject the application.

(Prior code Ch. 14 § 13-42).