

**CITY OF KOTZEBUE
RESOLUTION NO. 25-12**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE AUTHORIZING THE RENEWAL OF VITUS MARINE ("VITUS") TIDELANDS USE PERMIT PURSUANT TO TITLE 11, CHAPTER 11.04, "TIDELANDS REGULATIONS," OF THE KOTZEBUE MUNICIPAL CODE ("KMC") FOR FUEL DELIVERIES TO KOTZEBUE FOR AN ADDITIONAL THREE-YEAR TERM (2025-2027), WITH ONE ADDITIONAL, THREE-YEAR OPTION (2028-2030) DURING THE GENERAL USAGE WINDOW OF JUNE 15TH TO SEPTEMBER 30TH OF EACH YEAR.

WHEREAS, Vitus has delivered fuel from a barge landed on the beach next to the Crowley Marine Dock deliver from 2022-2024 and wishes to continue through 2025-2027 in accordance with the first renewal option in Kotzebue City Council Resolution 22-12, Exhibit "A" attached hereto;

WHEREAS, Vitus will be working in the City's Tidelands during this fuel- delivery effort and using Sikkiagruk "Shore" Avenue and a new fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA and the Vitus Fuel Farm;

WHEREAS, the Kotzebue Planning Commission, in Resolution 25-03, dated February 13, 2025, attached hereto as Exhibit "B," pursuant to Kotzebue Municipal Code 11.04.740, recommended approval of a three-year term Tidelands Permit (2025 - 2027) with one additional, optional three-year term (2028 - 2030). A fee of \$5,400.00 is set for the next three-year term (2025 - 2027);

WHEREAS, the Tidelands Permit issued to Vitus for this fuel delivery shall be for the exclusive use of the designated City-owned tidelands for the period needed by Vitus for its actual fuel deliveries; and,

WHEREAS, similar requests were made for use of a fuel header

on Crowley property, for example, in 2015 and approved by the City Council in Resolution No. 15-29, dated June 18, 2015, made again in 2016 and approved by the City Council in Resolution 17-01, dated July 7, 2016 and once again in 2017 and approved by the City Council in Resolution 17-35, dated June 15, 2017.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Kotzebue, authorizes the Acting City Manager, or his Designee, after consultation with the Acting Public Works Director, Planning Director and City Attorney, to issue a Tidelands Use Permit to Vitus for fuel deliveries to Kotzebue during the general usage window of June 15th to September 30th of each year (2025-2027), using Sikkiagruk Shore Avenue via a fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA and the Vitus Fuel Farm, on appropriate terms and conditions and pursuant to KMC §§ 11.04.720- 11.04.740, as set forth in Exhibit "C" attached hereto.

PASSED AND APPROVED by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 6th day of March, 2025.

CITY OF KOTZEBUE

Derek Haviland-Lie, Mayor

[SEAL]

ATTEST:

Lorraine Hunnicutt

Attachments:

- Exhibit "A" - Kotzebue City Council Resolution 22-12, dated May 12, 2022, w/o Exhibits [2 pages]
- Exhibit "B" Kotzebue Planning Commission Resolution 25-03 [2 pages]
- Exhibit "C" – 2025-2027 Vitus Marine Tidelands Use Permit Agreement [5 pages]



**CITY OF KOTZEBUE
RESOLUTION NO. 22-12**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ISSUE A TIDELANDS USE PERMIT TO VITUS MARINE ("VITUS") PURSUANT TO TITLE 11, CHAPTER 11.04, "TIDELANDS REGULATIONS," OF THE KOTZEBUE MUNICIPAL CODE ("KMC") FOR FUEL DELIVERIES TO KOTZEBUE FOR ONE THREE-YEAR TERM (2022-2024), WITH TWO ADDITIONAL, THREE-YEAR OPTIONS (2025-2027 AND 2028-2030) DURING THE GENERAL USAGE WINDOW OF JUNE 15 TO SEPTEMBER 30 OF EACH YEAR.

WHEREAS, Vitus wants to deliver fuel from a barge landed on the beach next to the Crowley Marine Dock;

WHEREAS, Vitus will be working in the City's Tidelands during this fuel-delivery effort and using Sikkiagruk Shore Avenue and a new fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA;

WHEREAS, the Kotzebue Planning Commission, in Resolution 2022-05, dated May 12, 2022, attached hereto as Exhibit "A," pursuant to Kotzebue Municipal Code 11.04.740, approved a three-year-term Tidelands Permit (2022 – 2024) with two additional three-year options (2025 – 2027 and 2028 – 2030) at a fee of \$5,400.00 for the first three-year term (2022 – 2024);

WHEREAS, the Tidelands Permit issued to Vitus for this fuel delivery shall be for the exclusive use of the designated City-owned tidelands for the period needed by Vitus for its actual fuel deliveries; and,

WHEREAS, similar requests were made for use of a fuel header on Crowley property, for example, in 2015 and approved by the City Council in Resolution No. 15-29, dated June 18, 2015, made again in 2016 and approved by the City Council in Resolution 17-01, dated July 7, 2016 and once again in 2017 and approved by the City Council in Resolution 17-35, dated June 15, 2017.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Kotzebue, authorizes the City Manager, or her Designee, after consultation with the Public Works Director, City Planner and City Attorney, to issue a Tidelands Use Permit to Vitus for fuel deliveries to Kotzebue during the general usage window of June 15 to September 30 of each year, using Sikkiagruk Shore Avenue and a new fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA, on appropriate terms and conditions and pursuant to KMC §§ 11.04.720 – 11.04.740, as set forth in Exhibit "B," attached hereto.

PASSED AND APPROVED by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 26th day of May, 2022.


CITY OF KOTZEBUE



~~Sandra Shroyer-Beaver, Mayor~~
Matthew Tekker Acting Mayor

[SEAL]

ATTEST:



Rosie Hensley, City Clerk

Attachments:

Exhibit "A" – Kotzebue Planning Commission Resolution 2022-05, dated May 12, 2022, w/o Exhibits [2 pages]

Exhibit "B" – [Proposed] 2022 Vitus Marine Tidelands Use Permit [6 pages]



P.O. Box 46
Kotzebue, Alaska 99752

City Hall
(907) 442-4401

Police Dept.
(907) 442-3351

Fire Dept.
(907) 442-3404

Public Works
(907) 442-3401

**PLANNING COMMISSION
RESOLUTION 2022-05**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF KOTZEBUE RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF KOTZEBUE THE APPROVAL OF VITUS MARINE TIDELAND USE PERMIT FOR CITY TIDELAND OWNED LANDS ADJACENT TO CROWLEY MARINE DOCK ON SIKIAGRUK SHORE AVENUE.

WHEREAS, 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 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 [KMC Chapter 3.12] for disposal of land, unless otherwise directed by the council."*

WHEREAS, Vitus Marine provides heating and power generation fuel delivery for commercial and public customers by way of City Tideland Use during July 1, 2022 and September 30, 2022. Vitus Marine proposes to pump fuel from a barge landing on the beach next to Crowley Marine Dock.

WHEREAS, Vitus Marine is an Alaskan Company with its Corporate Office in Anchorage, Alaska with fuel deliveries to local customers. Vitus Marine is a for-profit Company does business throughout the State of Alaska.

WHEREAS, With more competition, Vitus Marine has made positive effect through providing lower heating and gasoline fuel prices in Kotzebue fuel and the region.

WHEREAS, A three(3) year term Tideland Use Permit(2022-2024) with two additional three-year options(2025-2027 and 2028-2030) at a fee of \$5400.00 or the first three-year(2022-2024)term[\$300+\$1500 x 3 =\$5400.00] on such terms and conditions as required by Kotzebue Municipal Code Chapter 11.04 found at www.municode.com with most pertinent terms set out below in this email;

WHEREAS, for each year, the Tidelands Permit would be for the exclusive use of the designated City-owned tidelands area for the period needed by Vitus for

the time it is actually performing its fuel deliveries July1, 2022 to September 30, 2022.

NOW, THEREFORE, BE IT RESOLVED THAT: A resolution of the Kotzebue Planning Commission affirming there recommendation to the City Council of the City of Kotzebue the approval of Vitus Marine's 2022 Tideland Use Permit for city owned lands adjacent to the Crowley Marine Dock on Sikiagruk Shore Avenue.

Passed and approved this 10th day of May, 2022.

CITY OF KOTZEBUE
PLANNING COMMISSION

Ernie Norton
Ernie Norton, Chairman

ATTEST:

Ella Lisbourne
Ella Lisbourne, City Planner

Attachments;

Attachment -Letter Tidelands Use Permit

Attachment -Vicinity Map

Attachment-Vitus Terminals Safety and Regulatory Summary

Attachment-Marine Spill Response Procedures

Attachment-Certificate of Insurance



April 11, 2022

Ms. Ella Lisbourne
City Planner
City of Kotzebue
P.O. Box 46
Kotzebue, AK 99752

Re: Proposal for Use of Kotzebue Tidelands Ten Year Term, 2022 to 2032

Dear Ms. Lisbourne:

Please consider Vitus Marine's proposal to utilize tidelands within the city limits of Kotzebue. Vitus Marine proposes to utilize Kotzebue tidelands for moorage in order to deliver fuel and freight to Kotzebue between July 1, 2022 and June 30, 2032 during the areas ice free season. Similar to our operations for the past seven seasons, our typical delivery operation will continue to involve small freight operations delivering/receiving freight and operational items, as well as barge to fuel truck operations. The specific tideland areas Vitus propose to use are depicted on the attached large scale and vicinity maps.

All fuel and freight transfer operations are undertaken by our crew, which is staffed with professional mariners. Added to this security, often our operations are supported by local shoreside staff in Kotzebue. Vitus Energy's family of companies is committed to, and enjoys, an excellent track record of environmental stewardship. It is our primary mission to remain responsible carriers in order to support the communities we serve.

Regards,

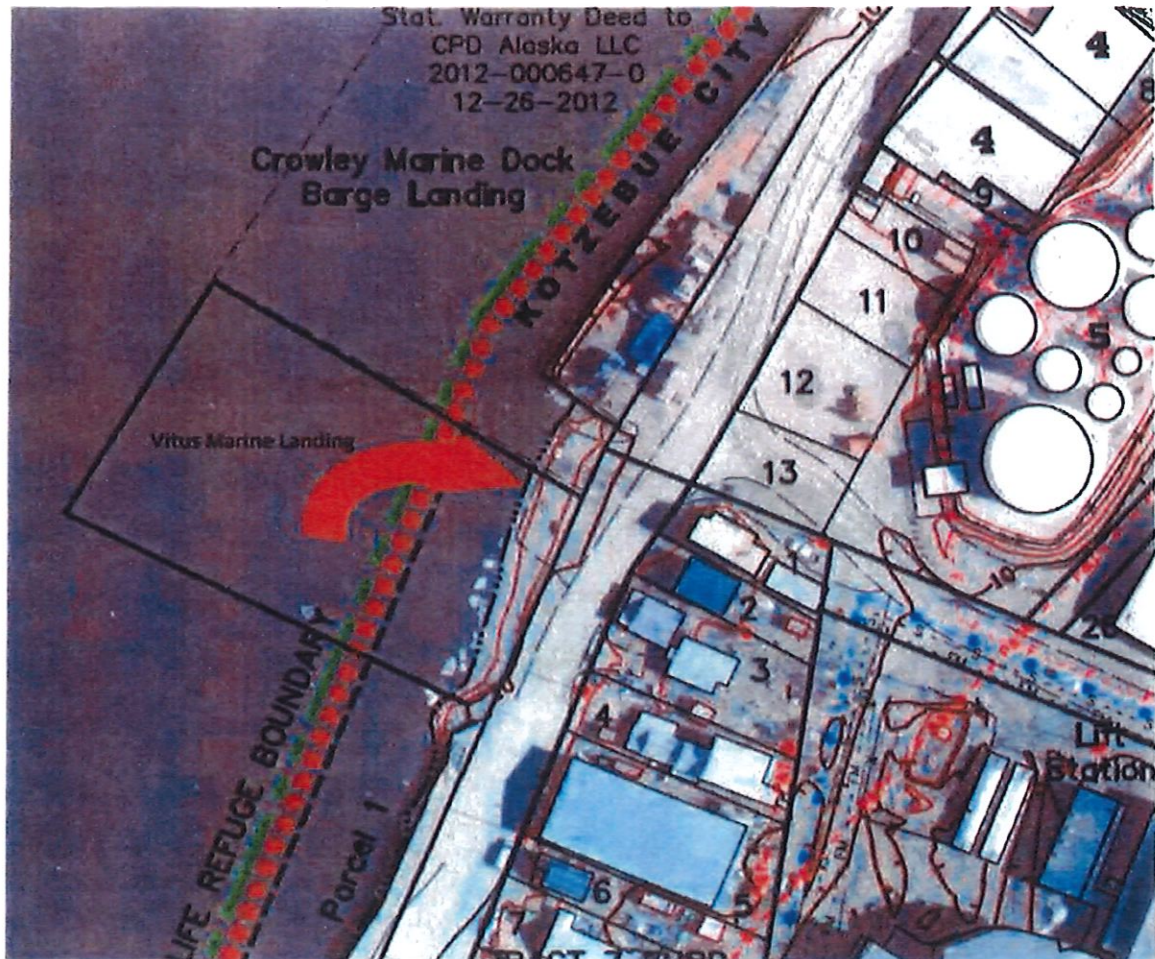
Adam Turner
Director, Shoreside Operations

Attachments:

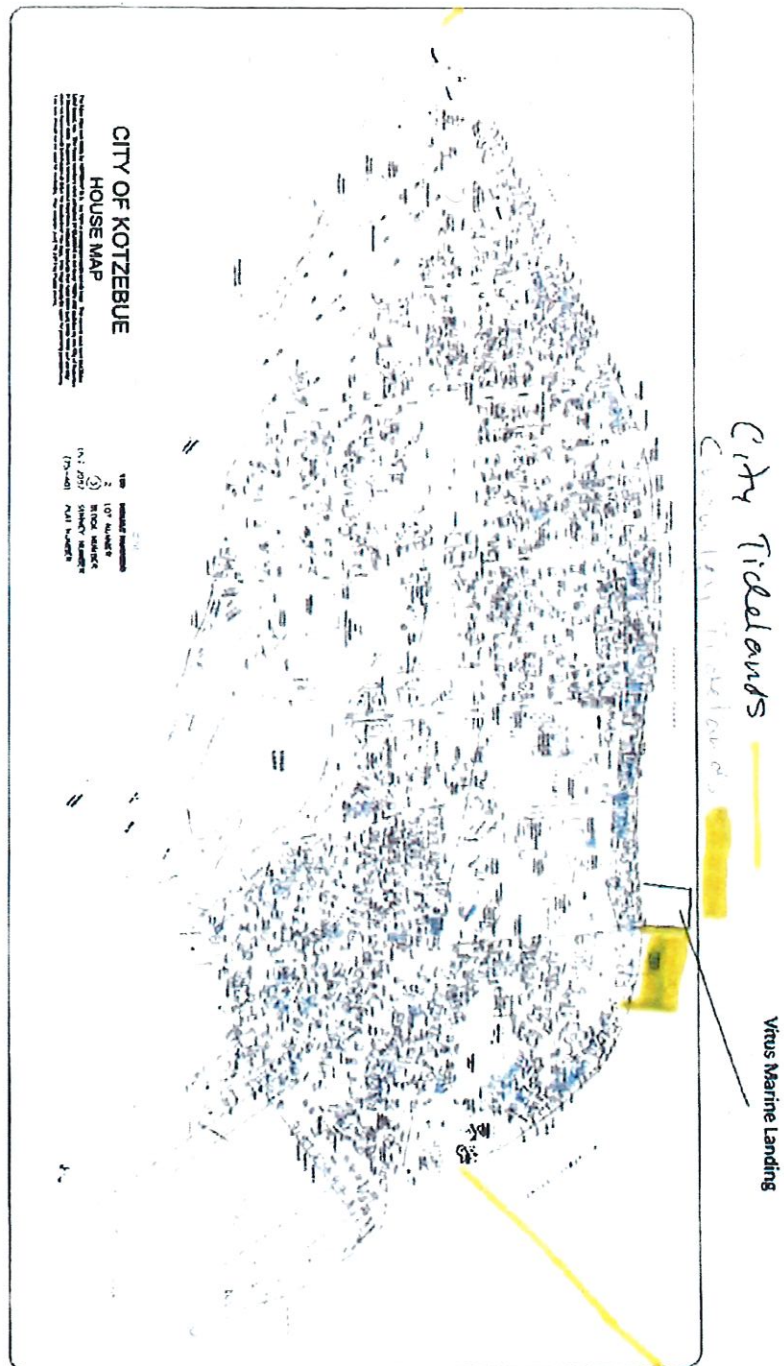
1. Large Scale Map
2. Vicinity Map
3. Safety and Regulatory Summary
4. Marine Spill Response Procedures



Large Scale Map



Vicinity Map





Vitus Terminals Safety and Regulatory Summary

Vitus Energy LLC, and its' subsidiaries, including our Kotzebue operation, operate within the heavily regulated industry of fuel transportation. Below are some of the regulatory requirements and approvals that Vitus has obtained.

- USDOT – Vitus drivers are required to meet all DOT requirements before they are hired. The drivers are subjected to a rigorous screening process that includes medical fitness, safety history, and background checks.
- USDOT P&HMSA – Vitus is a Registered Hazardous Material Transporter for Highway and Marine transport.
- FMCSA – Vitus trucks and their drivers meet the safety standards established by the Federal Motor Carrier Safety Agency.
- USCG – Vitus has a USCG approved Vessel Response Plan for our marine operations.
- ADEC – Vitus has a State of Alaska (Department of Environmental Conservation) approved Oil Discharge Prevention and Discharge Plan for our marine operations.
- ADOT&PF – Vitus has received State of Alaska permits to provide fuel delivery services to aircraft at the following facilities:
 - Anchorage International Airport
 - Kotzebue Airport

Vitus has an active Safety Management System (SMS) that safely guides our operations. The SMS includes policy and procedures for our operations, training requirements for personnel, job safety requirements, accident investigation procedures, and internal audit procedures.

Vitus personnel have been trained in 40-hour HAZWOPER, spill prevention procedures, and spill response management in addition to job specific training.

Vitus maintains an assortment of spill response equipment at our facilities, on our trucks, and onboard our vessels. In addition to the Vitus spill response trained personnel and equipment resources, we are members of the oil spill cooperative Alaska Chadux. Alaska Chadux is based in Anchorage and maintains response equipment depots around the state, and has a large pool of trained response personnel.

Best Regards,

Kevin M. O'Shea
Safety & Environmental Manager



Marine Spill Response Procedures

In the event of a spill while fueling a vessel or containers near water, follow the steps below:

1. Secure the source of the spill, if it is safe to do so
2. Contain as much of the product using sorbent boom and pads. Use extreme caution when containing gasoline:
3. Encircle the spilled product in the water with sorbent boom
4. Use sorbent pads to collect any free product on the water
5. Keep people away from area
6. Stay up wind of the spilled product
7. Use sorbent material to soak up free liquids on land
8. Place used sorbents into oily waste bags or open top drums for disposal
9. Notify Anchorage Office 907-793-9713 as soon as possible.

Report All Spills to Water to the USCG Immediately at 800-424-8802.

If the spill is beyond your ability to handle with the resources available to you locally, contact the Anchorage office for assistance immediately at 907-793-9713.

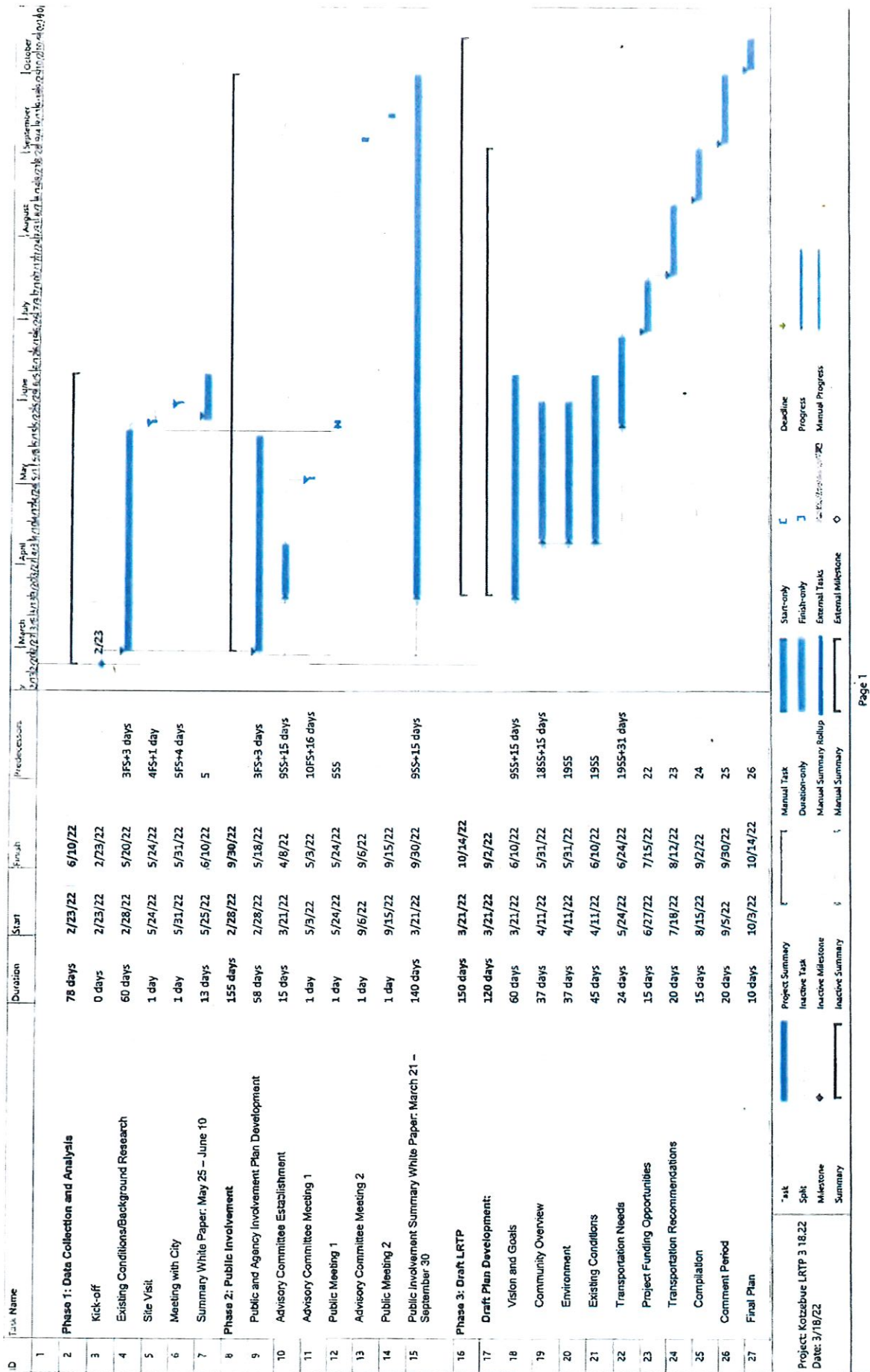


Exhibit “C”
Resolution 22-10
[Vitus Tidelands Permit]

City of Kotzebue
TIDELANDS PERMIT
ONE THREE-YEAR TERM (2022 – 2024)
[Vitus Energy, LLC d/b/a Vitus Marine - 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. Similar Tidelands Permits were issued pursuant to City of Kotzebue Resolution No. 15-29, dated June 18, 2015, and City of Kotzebue Resolution No. 17-01, dated July 7, 2017, copies of which is attached hereto as Exhibit "B" and incorporated herein by reference.

Nature of Request for Temporary Exclusive Use of Tidelands

Vitus Energy, LLC, d/b/a Vitus Marine ("Vitus"), of Anchorage, Alaska, has requested an exclusive use of a portion of the City of Kotzebue's Tidelands to facilitate delivery of fuel via an underground pipeline to KEA's and Vitus' fuel farm on Lagoon Street for one three-year term (2022-2024) with two additional three-year options (2025-2027 and 2028-2030) during the general usage window of June 15 to September 30 of each year, as set out in the various Vitus materials, attached hereto as Exhibit "C" and incorporated herein by reference.

Conditions Precedent and Promissory Conditions

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

1. Vitus 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 Tom Atkinson, City Manager, 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 Vitus to pay for an appraisal by MacSwain & Associates, LLC, Anchorage, Alaska for the value of the exclusive use of the City's surface tidelands and the value so determined would be paid to the City. However, since it appears that Vitus' use of the City's tidelands will be temporary during the general usage window of June 15 to September 30 of each year, the requirement for a formal appraisal is hereby waived and Vitus shall pay an Application Fee of \$300.00 per year and a Permit Fee of \$1,500.00 per year for the first three-year term of this Tidelands Permit. A check made payable to the City of Kotzebue, shall be submitted to Tom Atkinson, City Manager, P.O. Box 46,

Kotzebue, Alaska 99752-0046 within ten (10) days of the issuance of this Permit. No other fee shall be charged for this temporary, exclusive use by Vitus during the three-year term of this Permit.

PERMIT TERMS AND CONDITIONS

1. Vitus 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. Vitus 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. Provided, however, a Vitus Marine vessel may crane its skiff onto the deck of its tug to service it or Vitus may drive a truck onto the barge to fuel it. In these cases, each would be contained on top of Vitus' vessel and surrounded by booms on deck (or fueled within the oil containment rail on the barge). 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. Vitus 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. Vitus 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. Vitus and/or its agent(s) shall suspend uses until approval is given by the City Manager. If the proposed action constitutes an emergency, Vitus and/or its agent(s) shall comply with directions from the City Manager, 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.
8. Vitus 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 representative's 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, exclusive, authorization during the general usage window of June 15 to September 30 of each year, revocable by the City for cause.

12. Vitus 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 City Manager Tom Atkinson, or his Designee. The City Manager may be contacted at City Hall at (907) 442-3401, at his direct-dial number of (907) 442-5101 or via fax at (907) 442-3386 or (907) 442-3742. Vitus shall provide forty-eight (48) hours' advance written notice to the City Manager via e-mail to tatkinson@kotzebue.org and elisbourne@kotzebue.org and/or by fax to Ella Lisbourne, City Planner, at (907) 442-2155 of the dates, times and duration of Vitus's periodic, non-exclusive use of the City's tidelands. Once advance notice of the required, temporary, exclusive use is received from Vitus, the City shall: (1) prepare appropriate PSAs for posting and broadcast on KOTZ radio regarding the dates, times and duration of Vitus' deliveries within the City's tidelands; (2) deploy appropriate road closure signage; and, (3) notify KPD and KFD of the resultant road closures. The City may also require Vitus to use certain routes/easements for fuel delivery hoses deployed elsewhere. The City Manager reserves the right to modify these stipulations or use additional stipulations as deemed necessary.

14. Vitus 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 an exclusive use permit for Vitus during the general usage window of June 15 to September 30 of each year, 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.

17. The site used for this Permit shall be left in a clean, safe condition acceptable to the City Manager. The site shall be restored to a condition acceptable to the City Manager.

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 above-described City Tideland Area, Vitus must have prior authorization from the City Manager 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 City Manager. Provided, however, such access may be restricted following the procedures set in Paragraph 13, above, on Page 3 of 6.

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 of the site authorized by this Permit shall be limited to the tideland area specified in this Permit. Vitus is responsible for accurately siting operations within this area. Any proposed revisions to the location or operations of this activity within the City Tidelands must be approved, in writing, by the City Manager before the change in use occurs.

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 Vitus' 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 City Manager 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 City Manager.
- 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. Manifolded 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 DNR 24-hour Spill Report Number is (907) 451-2678 and the DNR fax number is (907) 451-2751. The DEC Spill Report Number is (907) 451-2121, (907) 451-2362 [fax] and, outside normal business hours - (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 442-2420. DNR, 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." Copies of all such written spill reports shall be provided to the City Manager at the e-mail addresses and fax numbers listed above in paragraph 13, at page 3 of 6.

25. This Permit shall expire at the end of the three-year term, on September 30, 2024, but is renewable for two, additional three-year terms (2025-2027 and 2028-2030) at the option of the City, upon mutual, written agreement of the Parties.

DATED this 27th day of may, 2022, at Kotzebue, Alaska.

CITY OF KOTZEBUE

VITUS ENERGY, LLC
d/b/a VITUS MARINE


TOM ATKINSON, City Manager

By: _____
Its: _____

ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
344 Sixth Avenue
Anchorage, Alaska

ADL 19285

INTERAGENCY LAND MANAGEMENT TRANSFER

The Division of Lands, Department of Natural Resources of the State of Alaska transfers and assigns to the City of Kotzebue, Box 100, Kotzebue, Alaska.

or its successors in function, hereinafter called Assignee, jurisdiction and management of the following described lands, including uplands, shorelands, tidelands or submerged lands, located in the State of Alaska, to-wit:

A parcel of tide and submerged land known officially as Alaska Tideland Survey No. 238 and more properly described as follows: a tract of tide and submerged lands located below the mean high tide line of Kotzebue Sound seaward of the City of Kotzebue and shown on ATS 238 which is on file at the office of the Division of Lands. Starting at Cor. No. 12 M.C. of the townsite survey of Kotzebue which is common with Cor. No. 1 of ATS 238 thence by metes and bounds

N. 68°41' W. 1850 feet to Cor. No. 2,

N. 23°00' E. 3800 feet to Cor. No. 3,

N. 48°00' E. 4750 feet to Cor. No. 4,

S. 84°00' E. 1650 feet to Cor. No. 5,

S. 05°44' W. 1850 feet to Cor. No. 6,

hence meandering along the mean high tide line to Cor. No. 1, the point of beginning. Containing 194.34 acres more or less.

This transfer is made subject to all valid existing preference rights that may be acquired under the provisions of Section 5, Article 3, Chapter 169, as amended.

said jurisdiction and management being limited to the surface and so much of the subsurface as may be required in order to make use of the land for public purposes within the jurisdiction of the Assignee, and for so long as required for said public purposes. The right

to construct, maintain or improve and remove buildings, roads, airports and works of any description, and to use or remove sand, gravel, timber, or other materials on or near the surface is expressly granted when such action is necessary in order to make use of the land for any public purposes within the jurisdiction of the Assignee. The Division of Lands expressly reserves jurisdiction and management of all other minerals including oil and gas in the above described land, provided, however, that the Division of Lands will not permit surface entry for the purpose of mineral or oil and gas exploration or development without the consent of the Assignee.

Dated at Anchorage, State of Alaska, this 10th day of September, 19 62.




Director, Division of Lands
Department of Natural Resources

UNITED STATES OF AMERICA)
STATE OF ALASKA) ss.

This certifies that on the 19th day of September, 19 62, before me a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared Robert E. Bell, to me known and known to me to be the person described in and who executed and acknowledged the foregoing instrument on behalf of the State of Alaska, as Director of the Division of Lands, Department of Natural Resources. The said Robert E. Bell, after being duly sworn according to law, stated to me under oath that he is the Director of the Division of Lands, Department of Natural Resources and has authority pursuant to law to execute and acknowledge the foregoing instrument as such Director on behalf of the State of Alaska, acting through the Division of Lands, Department of Natural Resources and that he executed and acknowledged the same freely and voluntarily as the free and voluntary act and deed of the said State of Alaska and for the Division of Lands, Department of Natural Resources.

WITNESS my hand and official seal the day and year in this certificate first above written.



Notary Public in and for the State of
Alaska.
My commission expires March 2, 1966

State of Alaska



BOOK 440 PAGE 107
Nootak - Kobuk Recording District

NOATAK - KOBUK
Serial No. 66-219

Patent

Tidelands No. 185

Know All Men By These Presents that the State of Alaska, pursuant to Article III, Chapter 169, SLA 1959, as amended and in consideration of: A Municipal Preference Right pursuant to Section 38.05.320, Article 11, Paragraph (b), and the rule and regulations promulgated thereunder, and other good and valuable consideration, does hereby grant to:

CITY OF KOTzebue

Box 100

Kotzebue, Alaska

It is the intent of the State of Alaska, that the heirs and assigns, those Tidelands lying seaward of the mean high tide line in Kotzebue Sound, State of Alaska, described as follows:

As shown on ATS 238:

A tract of tide and submerged lands located below the mean high tide line of Kotzebue Sound, seaward of the City of Kotzebue, more particularly described as follows:

Beginning at Corner No. 12 M.C. of the official survey of the Kotzebue Townsite, U.S.S. 2863, which is common to Corner No. 1 of this survey, Alaska Tidelands Survey No. 238, from which W.C.M.C. 12 of U.S. Survey 2863 bears N 72° 48' 42.7" E a distance of 36,942 feet; Thence N 68° 40' 12.6" W., a distance of 1,650.00 feet to Corner No. 2; Thence N 21° 19' 47.4" E, a distance of 3,800.00 feet to Corner No. 3; Thence N 48° 57' 34.6" E, a distance of 4,906.744 feet to Corner No. 4; Thence S 84° 17' 11.9" E, a distance of 1,650.00 feet to Corner No. 5; Thence S 05° 42' 48.1" W, a distance of 1,650.00 feet to Corner No. 6 which is common to Corner No. 3 M.C. of U.S.S. 2863, Tract B. Thence with meanders as follows: N 84° 17' 11.9" W 376.226 ft. S 74° 44' 17.5" W 329.684 ft. S 63° 50' 35.2" W 364.491 ft. S 51° 52' 55.9" W 243.398 ft. S 45° 01' 50.0" W 469.258 ft. S 48° 24' 51.1" W 527.906 ft. S 55° 25' 00.1" W 540.908 ft. S 56° 08' 48.8" W 309.839 ft. S 52° 02' 56.0" W 171.533 ft. S 49° 17' 00.5" W 227.039 ft. S 47° 05' 04.4" W 651.636 ft. S 36° 49' 22.0" W 288.846 ft. S 26° 35' 39.2" W 406.881 ft. S 21° 41' 46.7" W 866.392 ft. S 21° 46' 46.8" W 1,054.713 ft. S 21° 19' 47.4" W 890.320 ft to Corner No. 1 and the point of beginning containing 392.753 acres, not including the tract to be conveyed to B & R Tug and Barge Company. Latitude 66° 53' 25" N and longitude 162° 36' 30" W at Corner No. 1 of A.T.S. 238.

BOOK 40 PAGE 108
Nostak - Kobuk Recording District

RECORDED - FILED	
Nostak - Kobuk REC. DIST.	
DATE	<u>April 25</u> 19 <u>66</u>
TIME	<u>5:35</u> P.M.
Requested by	<u>Chas. J. Kitchie</u>
Address	<u>Barrow, Alaska</u>

Section _____ Township 17 North Range 18 West KR Meridian
according to the official plat of survey thereof, on file and of record with the Division of Lands and recorded in
Nostak-Kobuk Serial No. 66-78
Book _____ Page _____ of the official records of the _____ Recording Precinct, Kotzebue, Alaska

The Grantor, Alaska, expressly reserves, out of the grant hereby made, unto itself, 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 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, 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, powerlines, 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 aforesaid, 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.

This indenture is executed subject to the covenant that no person, firm, association or corporation shall take herring spawn in waters on or over the tidelands herein conveyed, nor shall any person, firm, association, organization or corporation engage in the sale, barter or exchange of herring spawn for profit, providing however, nothing herein shall be construed to prevent or prohibit the taking of herring spawn by residents of this State for (1) personal consumption or (2) barter or exchange for the necessities of life, pursuant to Section 1, Chapter 34, SLA 1959.

To Have and to Hold the said land with the appurtenances thereof unto the said Grantee and
its heirs and assigns forever.

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director
of the Division of Lands pursuant to Article II, Chapter 169, SLA 1959, as amended this 11th
day of April A.D. 1966.


Director, Division of Lands

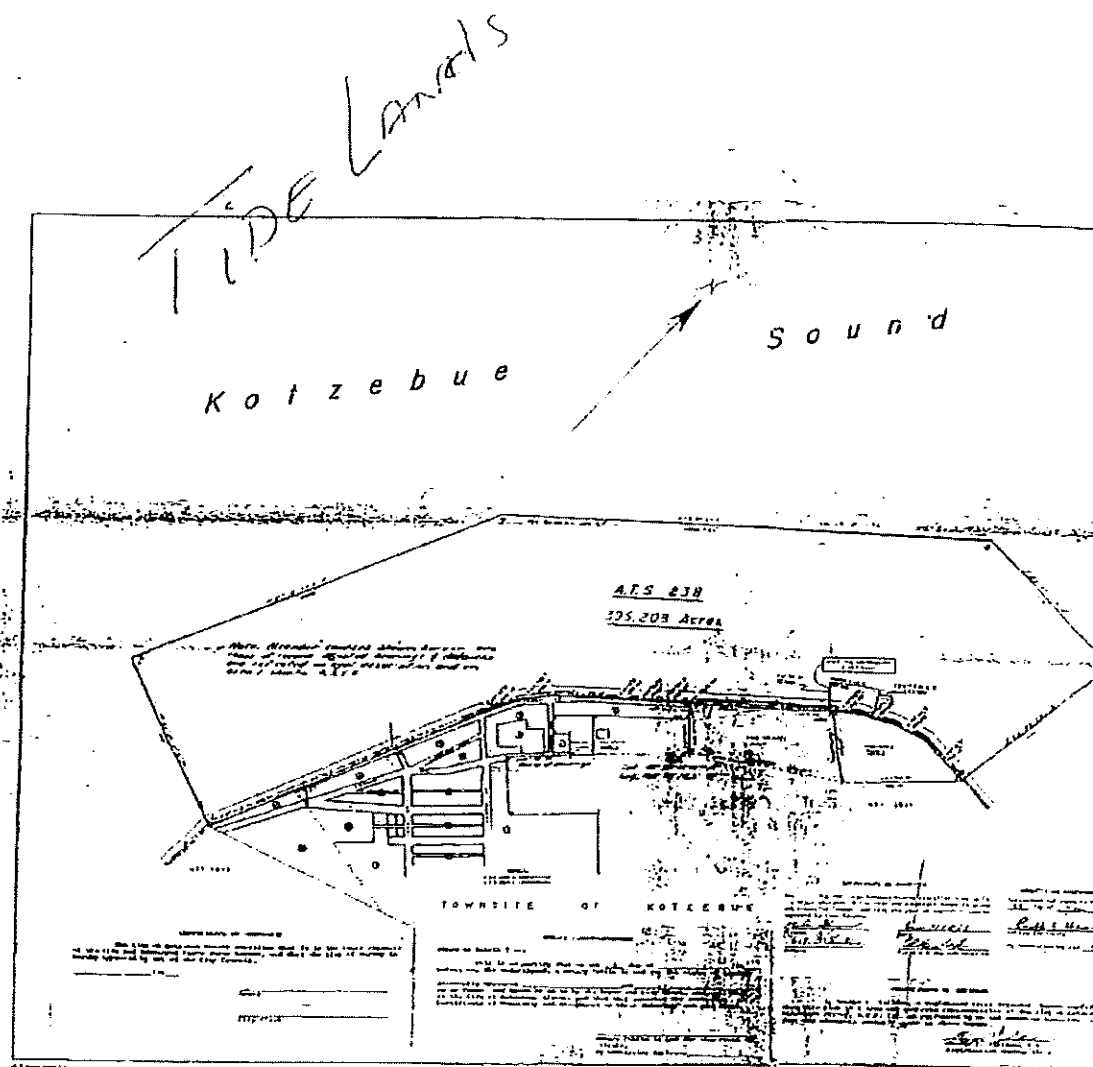
State Record of Patents

Vol. III

Page 165

Exhibit "A" to Vitus Tidelands Permit

Page 4 of 5





**CITY OF KOTZEBUE
RESOLUTION NO. 22-12**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ISSUE A TIDELANDS USE PERMIT TO VITUS MARINE ("VITUS") PURSUANT TO TITLE 11, CHAPTER 11.04, "TIDELANDS REGULATIONS," OF THE KOTZEBUE MUNICIPAL CODE ("KMC") FOR FUEL DELIVERIES TO KOTZEBUE FOR ONE THREE-YEAR TERM (2022-2024), WITH TWO ADDITIONAL, THREE-YEAR OPTIONS (2025-2027 AND 2028-2030) DURING THE GENERAL USAGE WINDOW OF JUNE 15 TO SEPTEMBER 30 OF EACH YEAR.

- WHEREAS,** Vitus wants to deliver fuel from a barge landed on the beach next to the Crowley Marine Dock;
- WHEREAS,** Vitus will be working in the City's Tidelands during this fuel-delivery effort and using Sikkiagruk Shore Avenue and a new fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA;
- WHEREAS,** the Kotzebue Planning Commission, in Resolution 2022-05, dated May 12, 2022, attached hereto as Exhibit "A," pursuant to Kotzebue Municipal Code 11.04.740, approved a three-year-term Tidelands Permit (2022 – 2024) with two additional three-year options (2025 – 2027 and 2028 – 2030) at a fee of \$5,400.00 for the first three-year term (2022 – 2024);
- WHEREAS,** the Tidelands Permit issued to Vitus for this fuel delivery shall be for the exclusive use of the designated City-owned tidelands for the period needed by Vitus for its actual fuel deliveries; and,
- WHEREAS,** similar requests were made for use of a fuel header on Crowley property, for example, in 2015 and approved by the City Council in Resolution No. 15-29, dated June 18, 2015, made again in 2016 and approved by the City Council in Resolution 17-01, dated July 7, 2016 and once again in 2017 and approved by the City Council in Resolution 17-35, dated June 15, 2017.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Kotzebue, authorizes the City Manager, or her Designee, after consultation with the Public Works Director, City Planner and City Attorney, to issue a Tidelands Use Permit to Vitus for fuel deliveries to Kotzebue during the general usage window of June 15 to September 30 of each year, using Sikkiagruk Shore Avenue and a new fuel header in Talilraq Avenue, next to the Kotzebue High School, for fuel delivery to KEA, on appropriate terms and conditions and pursuant to KMC §§ 11.04.720 – 11.04.740, as set forth in Exhibit "B," attached hereto.


PASSED AND APPROVED by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 26th day of May, 2022.

CITY OF KOTZEBUE


~~Sandra Shroyer-Beaver, Mayor~~
Matthew Tekker Acting Mayor

[SEAL]

ATTEST:


Rosie Hensley, City Clerk

Attachments:

Exhibit "A" – Kotzebue Planning Commission Resolution 2022-05, dated May 12, 2022, w/o Exhibits [2 pages]

Exhibit "B" – [Proposed] 2022 Vitus Marine Tidelands Use Permit [2 pages]



April 11, 2022

Ms. Ella Lisbourne
City Planner
City of Kotzebue
P.O. Box 46
Kotzebue, AK 99752

Re: Proposal for Use of Kotzebue Tidelands Ten Year Term, 2022 to 2032

Dear Ms. Lisbourne:

Please consider Vitus Marine's proposal to utilize tidelands within the city limits of Kotzebue. Vitus Marine proposes to utilize Kotzebue tidelands for moorage in order to deliver fuel and freight to Kotzebue between July 1, 2022 and June 30, 2032 during the areas ice free season. Similar to our operations for the past seven seasons, our typical delivery operation will continue to involve small freight operations delivering/receiving freight and operational items, as well as barge to fuel truck operations. The specific tideland areas Vitus propose to use are depicted on the attached large scale and vicinity maps.

All fuel and freight transfer operations are undertaken by our crew, which is staffed with professional mariners. Added to this security, often our operations are supported by local shoreside staff in Kotzebue. Vitus Energy's family of companies is committed to, and enjoys, an excellent track record of environmental stewardship. It is our primary mission to remain responsible carriers in order to support the communities we serve.

Regards,

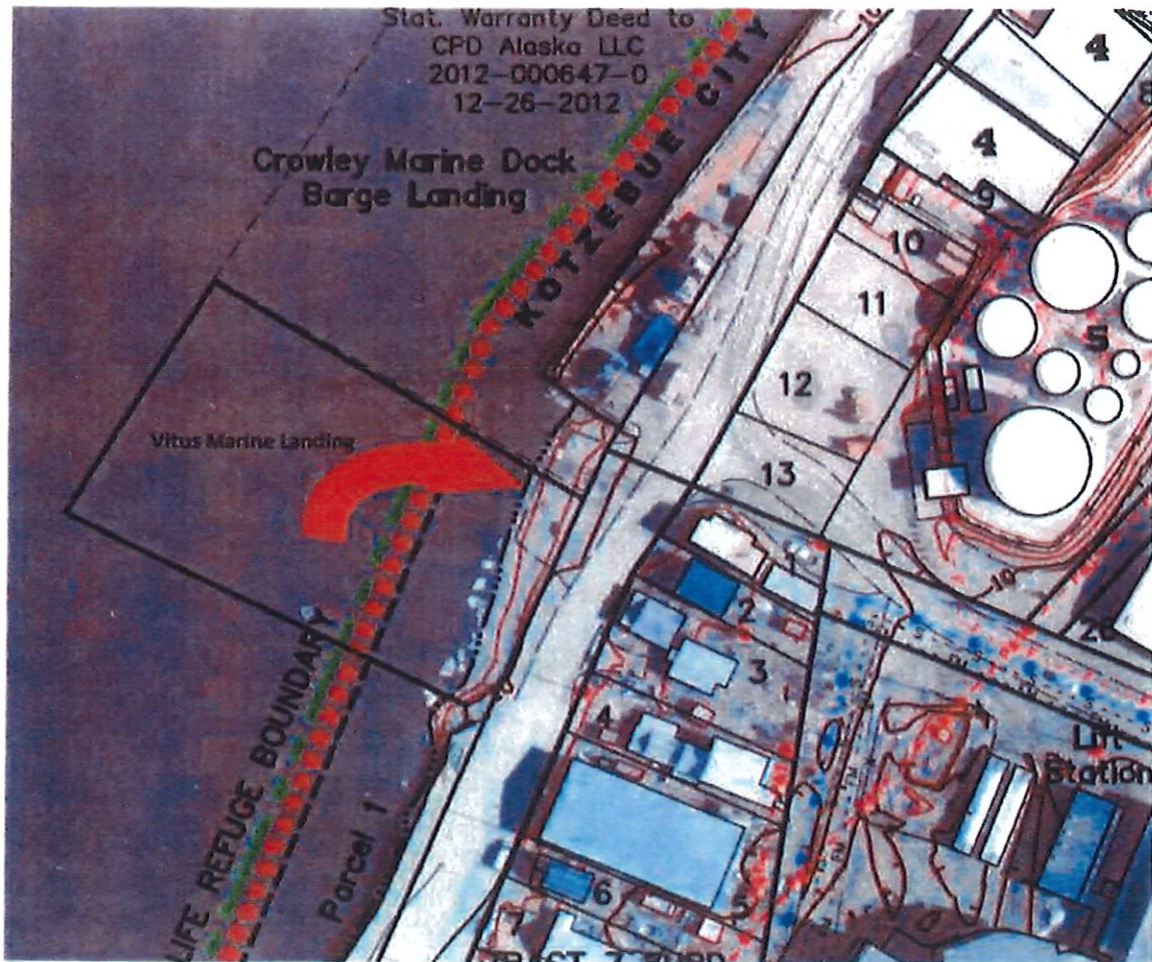
Adam Turner
Director, Shoreside Operations

Attachments:

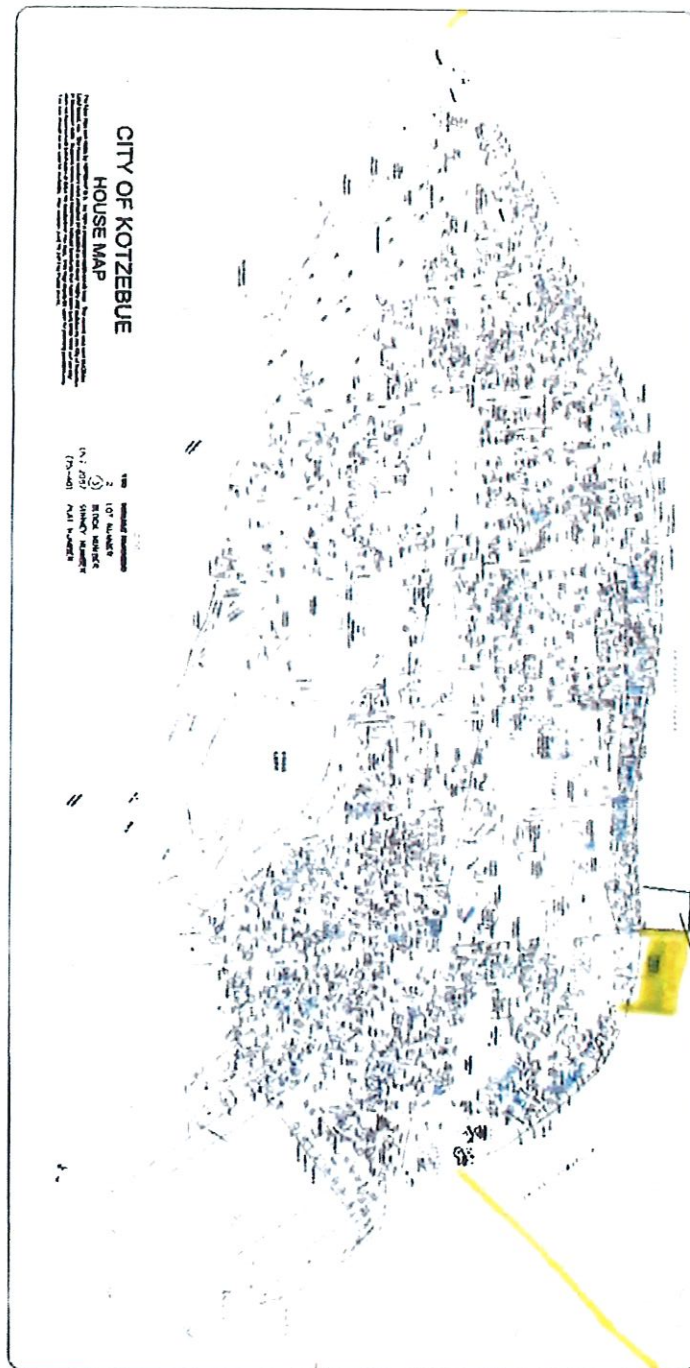
1. Large Scale Map
2. Vicinity Map
3. Safety and Regulatory Summary
4. Marine Spill Response Procedures



Large Scale Map



Vicinity Map



City Tidelands

Vitus Marine Landing



Vitus Terminals Safety and Regulatory Summary

Vitus Energy LLC, and its' subsidiaries, including our Kotzebue operation, operate within the heavily regulated industry of fuel transportation. Below are some of the regulatory requirements and approvals that Vitus has obtained.

- USDOT – Vitus drivers are required to meet all DOT requirements before they are hired. The drivers are subjected to a rigorous screening process that includes medical fitness, safety history, and background checks.
- USDOT P&HMSA – Vitus is a Registered Hazardous Material Transporter for Highway and Marine transport.
- FMCSA – Vitus trucks and their drivers meet the safety standards established by the Federal Motor Carrier Safety Agency.
- USCG – Vitus has a USCG approved Vessel Response Plan for our marine operations.
- ADEC – Vitus has a State of Alaska (Department of Environmental Conservation) approved Oil Discharge Prevention and Discharge Plan for our marine operations.
- ADOT&PF – Vitus has received State of Alaska permits to provide fuel delivery services to aircraft at the following facilities:
 - Anchorage International Airport
 - Kotzebue Airport

Vitus has an active Safety Management System (SMS) that safely guides our operations. The SMS includes policy and procedures for our operations, training requirements for personnel, job safety requirements, accident investigation procedures, and internal audit procedures.

Vitus personnel have been trained in 40-hour HAZWOPER, spill prevention procedures, and spill response management in addition to job specific training.

Vitus maintains an assortment of spill response equipment at our facilities, on our trucks, and onboard our vessels. In addition to the Vitus spill response trained personnel and equipment resources, we are members of the oil spill cooperative Alaska Chadux. Alaska Chadux is based in Anchorage and maintains response equipment depots around the state, and has a large pool of trained response personnel.

Best Regards,

Kevin M. O'Shea
Safety & Environmental Manager



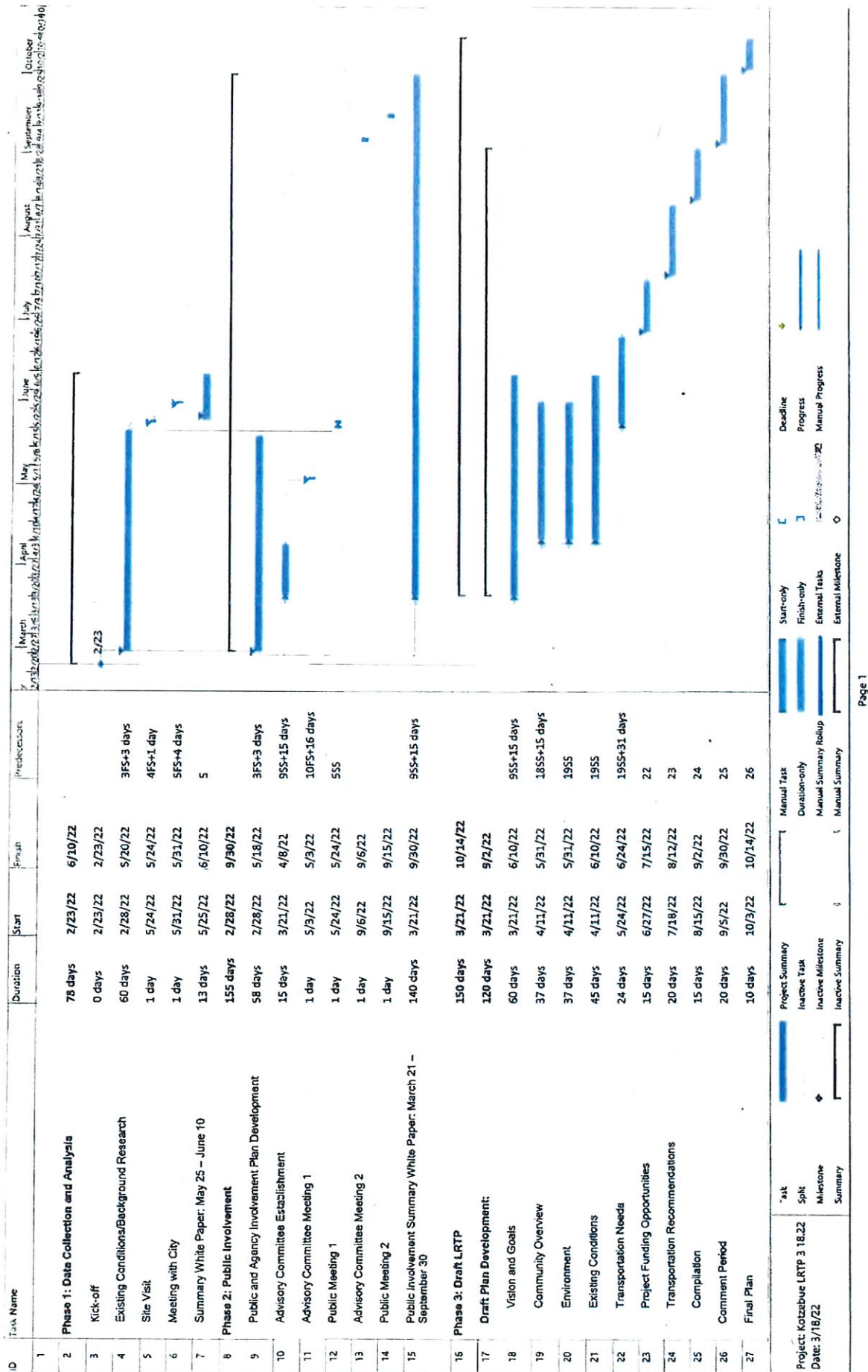
Marine Spill Response Procedures

In the event of a spill while fueling a vessel or containers near water, follow the steps below:

1. Secure the source of the spill, if it is safe to do so
2. Contain as much of the product using sorbent boom and pads. Use extreme caution when containing gasoline:
3. Encircle the spilled product in the water with sorbent boom
4. Use sorbent pads to collect any free product on the water
5. Keep people away from area
6. Stay up wind of the spilled product
7. Use sorbent material to soak up free liquids on land
8. Place used sorbents into oily waste bags or open top drums for disposal
9. Notify Anchorage Office 907-793-9713 as soon as possible.

Report All Spills to Water to the USCG Immediately at 800-424-8802.

If the spill is beyond your ability to handle with the resources available to you locally, contact the Anchorage office for assistance immediately at 907-793-9713.



IT'S THE LAW!

AS 46.03.755, 18 AAC 75.300, 75.325 and 18 AAC 78.200

REPORT OIL AND HAZARDOUS SUBSTANCE SPILLS

During Normal Business Hours

call the nearest response team office:

Central Alaska:
Anchorage (907) 269-3063
Fax: (907) 269-7648

Northern Alaska:
Fairbanks (907) 451-2121
Fax: (907) 451-2362

Southeast Alaska:
Juneau (907) 465-5340
Fax: (907) 465-5245

Alaska Pipeline:
Fairbanks (907) 451-2121
Fax: (907) 451-2362

Outside Normal Business Hours

Toll Free 1-800-478-9300

International 1-907-269-0667



Alaska Department of
Environmental Conservation
Division of Spill Prevention and Response
[www.dec.alaska.gov/spar/ppr/spill-
information/reporting](http://www.dec.alaska.gov/spar/ppr/spill-information/reporting)

Hazardous Substance

Any hazardous substance spill, other than oil, must be reported immediately.

Oil – Petroleum Products

To Water

- ◆ Any amount spilled to water must be reported immediately.

To Land

- ◆ Spills in **excess of 55 gallons** must be reported immediately.
- ◆ Spills in **excess of 10 gallons, but 55 gallons or less**, must be reported within 48 hours after the person has knowledge of the spill.
- ◆ Spills of **1 to 10 gallons** must be recorded in a spill reporting log submitted to ADEC each month.

To Impermeable Secondary Containment Areas

- ◆ Any spills in **excess of 55 gallons** must be reported within 48 hours.

Additional Requirements for Underground Storage Tank Spill Reporting

Regulated Underground Storage Tank (UST) systems are defined at 18 AAC 78.005. Releases at heating oil tanks must be reported.

- You must report a suspected belowground release from a UST system, in any amount, within 24 hours (18 AAC 78.220(c)).
- You must report if your release detection system indicates two consecutive months of invalid or inconclusive results.
- If you observe unusual operating conditions, sudden loss, erratic dispensing (slow flow/no flow) or discharge to soil or water, **report it to the UST Unit:**

907-269-3055 or 269-7679



**KOTZEBUE PLANNING COMMISSION
RESOLUTION 25-03**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
KOTZEBUE RECOMMENDING TO THE KOTZEBUE CITY COUNCIL THE
RENEWAL OF VITUS MARINE TIDELAND USE PERMIT FOR CITY TIDELAND
OWNED LANDS ADJACENT TO CROWLEY MARINE DOCK ON SIKIAGRUK
SHORE AVENUE**

- WHEREAS,** 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 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 [KMC Chapter 3.12] for disposal of land, unless otherwise directed by the council."*;
- WHEREAS,** Vitus Marine provides heating and power generation fuel delivery for commercial and public customers by way of City Tideland Use during June 15 and September 30. Vitus-Marine proposes to pump fuel from a barge landing on the beach next to Crowley Marine Dock;
- WHEREAS,** Vitus Marine is an Alaskan Company with its Corporate Office in Anchorage, Alaska with fuel deliveries to local customers. Vitus Marine is a for-profit Company that does business throughout the State of Alaska;
- WHEREAS,** With more competition, Vitus Marine has had a positive effect through providing lower heating and gasoline fuel prices in Kotzebue fuel and the region;

WHEREAS, A three(3) year term Tideland Use Permit(2025-2027) with two additional three-year options(2028-2030 and 2030-2032) at a fee of \$5400.00 or the first three-year(2025-2027) term[\$300+\$1500 x 3=\$5400.00] on such terms and conditions as required by Kotzebue Municipal Code Chapter 11.04;

WHEREAS, for each year the tidelands permit would be for the exclusive use of the designated City-owned tidelands area for the period needed by Vitus for the time that it is actually performing its fuel deliveries June 15 to September 30;

WHEREAS, the Planning Commission has determined that the variance is warranted and in the best interest of the City of Kotzebue and its residents;

NOW THEREFORE BE IT RESOLVED:

A resolution of the Kotzebue Planning Commission affirming their recommendation to the City Council of the City of Kotzebue the approval of Vitus Marine's 2025 Tideland Use Permit for City-owned tidelands adjacent to the Crowley Marine Dock on Sikiagruk "Shore" Avenue.

PASSED AND APPROVED by the Kotzebue Planning Commission on this 13th day of February, 2025.

CITY OF KOTZEBUE

Planning Commission


Ernest Norton, Chairman

ATTEST:


Sam Camp, Planning Director

City of Kotzebue Planning Commission Resolution 25-03
February 13, 2025
Page 2 of 2

City of Kotzebue
TIDELANDS PERMIT
SECOND THREE-YEAR TERM (2025 - 2027)

[Vitus Energy, LLC d/b/a Vitus Marine - 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.

Nature of Request for Temporary Exclusive Use of Tidelands

Vitus Energy, LLC, d/b/a Vitus Marine ("Vitus"), of Anchorage, Alaska, has requested an exclusive use of a portion of the City of Kotzebue's Tidelands to facilitate delivery of fuel via an underground pipeline to KEA's and Vitus' fuel farm on Lagoon Street for a second three-year term (CY2025-CY2027) with a possible option for an additional three-year term (CY2028-CY2030) during the general usage window of June 15th to September 30 of each year, as set out in the various Vitus materials, attached hereto as Exhibit "C" and incorporated herein by reference.

Conditions Precedent and Promissory Conditions

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

1. V i t u s 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 the City Manager before any work commences in the tidelands;
2. KMC 11.04.510, 11.04.630 and 11.04.640, normally would require Vitus to pay for an appraisal by MacSwain & Associates, LLC, Anchorage, Alaska for the value of the exclusive use of the City's surface tidelands and the value so determined would be paid to the City. However, since it appears that Vitus' use of the City's tidelands will be temporary during the general usage window of June 15th to September 30th of each year, the requirement for a formal appraisal is hereby waived and Vitus shall pay an Application Fee of \$300.00 per year and a Permit Fee of \$1,500.00 per year for the second three-year term of this Tidelands Permit. A check made payable to the City of Kotzebue, in the amount of \$5400.00 shall be submitted to the City Manager, P.O. Box 46, Kotzebue, Alaska 99752-0046 within ten (10) days of the issuance of this Permit. No other fee shall be charged for this temporary, exclusive use by Vitus during the three-year term (CY2025-CY2027) of this Permit.

PERMIT TERMS AND CONDITIONS

1. V i t u s 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. Vitus 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. Provided, however, a Vitus Marine vessel may crane its skiff onto the deck of its tug to service it or Vitus may drive a truck onto the barge to fuel it. In these cases, each would be contained on top of Vitus' vessel and surrounded by booms on deck (or fueled within the oil containment rail on the barge). 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. Vitus 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. Vitus 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. Vitus and/or its agent(s) shall suspend uses until approval is given by the City Manager. If the proposed action constitutes an emergency, Vitus and/or its agent(s) shall comply with directions from the City Manager, 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.

8. Vitus 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 representative's 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, exclusive, authorization during the general usage window of June 15th to September 30th of each year, revocable by the City for cause.

12. Vitus 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 Sam Camp, or his Designee. The Planning Director may be contacted at Public Works at (907) 442-5203. Vitus shall provide forty-eight (48) hours' advance written notice to the Acting City Manager or Planning Director via e-mail to rferguson@kotzebue.org and scamp@kotzebue.org of the dates, times and duration of Vitus's periodic, non-exclusive use of the City's tidelands. Once advance notice of the required, temporary, exclusive use is received from Vitus, the City shall: (1) prepare appropriate PSAs for posting and broadcast on KOTZ radio regarding the dates, times and duration of Vitus' deliveries within the City's tidelands; (2) deploy appropriate road closure signage; and, (3) notify KPD and KFD of the resultant road closures. The City may also require Vitus to use certain routes/easements for fuel delivery hoses deployed elsewhere. The City Manager reserves the right to modify these stipulations or use additional stipulations as deemed necessary.

14. Vitus assumes all responsibility, risk and liability for all activities of Permittee, its employees, agents, invitees, contractors, subcontractors or licensees directly or indirectly conducted in connection with this 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 an exclusive use permit for Vitus during the general usage window of June 15th to September 30th of each year, the City may only grant additional authorizations to other third-parties for compatible uses on or adjacent to the land under this authorization with the permission of Vitus.

17. The site used for this Permit shall be left in a clean, safe condition acceptable to the City Manager. The site shall be restored to a condition acceptable to the City Manager.

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 above-described City Tideland Area, Vitus must have prior authorization from the City Manager 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 City Manager. Provided, however, such access may be restricted following the procedures set in Paragraph 13, above, on Page 3 of 6.

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 of the site authorized by this Permit shall be limited to the tideland area specified in this Permit. Vitus is responsible for accurately siting operations within this area. Any proposed revisions to the location or operations of this activity within the City Tidelands must be approved, in writing, by the City Manager before the change in use occurs.

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 Vitus' 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 City Manager 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 City Manager.

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. Manifolder 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 DNR 24-hour Spill Report Number is (907) 451-2678 and the DNR fax number is (907) 451-2751. The DEC Spill Report Number is (907) 451-2121, (907) 451-2362 [fax] and, outside normal business hours - (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 442-2420. DNR, 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." Copies of all such written spill reports shall be provided to the City Manager at the e-mail addresses and fax numbers listed above in paragraph 13, at page 3 of 6.

This Permit shall expire at the end of the three-year term, on September 30, 2027, but is renewable for one additional three-year terms (2028-2030) at the option of the City, upon mutual, written agreement of the Parties and following the process and procedures used for the preceding two, three-year term permits (2022-2024 and 2025-2027).