

Kotzebue Municipal Code Tidelands Interpretation

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.

These tidelands extend from N68° 40' 12.60" W from the west end of the airport runway to S05° 42' 48.10" W just south of Minerva Street and extends from the shoreline 1850 feet. This area is just short of the docks that commercial fisheries traditionally operate on in the Kotzebue Sound. It is understood that entities operating outside of City of Kotzebue Tidelands are not required to have a City of Kotzebue Tidelands Permit. However, commercial fisheries operating outside of City of Kotzebue Tidelands have conducted business with commercial fisherman operating within City of Kotzebue Tidelands. Furthermore, instead of requiring tidelands permits of all commercial fisherman operating within City of Kotzebue Tidelands, it has been the practice of the City to issue Tidelands Permits to the commercial fisheries that cover operations by commercial fishermen in City of Kotzebue Tidelands selling to commercial fisheries. This is not clearly defined under Chapter 11.04, "Tideland Regulations," of the Kotzebue Municipal Code ("KMC").

Now, to establish a clear understanding of the interpretation of the KMC Tidelands Regulations this matter is brought before the Planning Commission to give direction to the Planning Department. Below are two options outlined that the Planning Commission may act on:

1. If the Planning Commission wishes to uphold the current interpretation of the City of Kotzebue Tidelands Regulations, permits will be required for those entities not only operating in City of Kotzebue Tidelands, but also for those who conduct business with individuals or entities that operate within City of Kotzebue Tidelands.
2. If the Planning Commission wishes to change the current interpretation of the City of Kotzebue Tidelands Regulations, permits will NOT be required for those entities operating outside of City of Kotzebue Tidelands. Furthermore, there will be a strict interpretation of this code in that Tidelands Permits will only be required if the entities operations are physically located within City of Kotzebue Tidelands.

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

The city council may issue permits for the use and/or improvements of city-owned tidelands. 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).

- **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.**

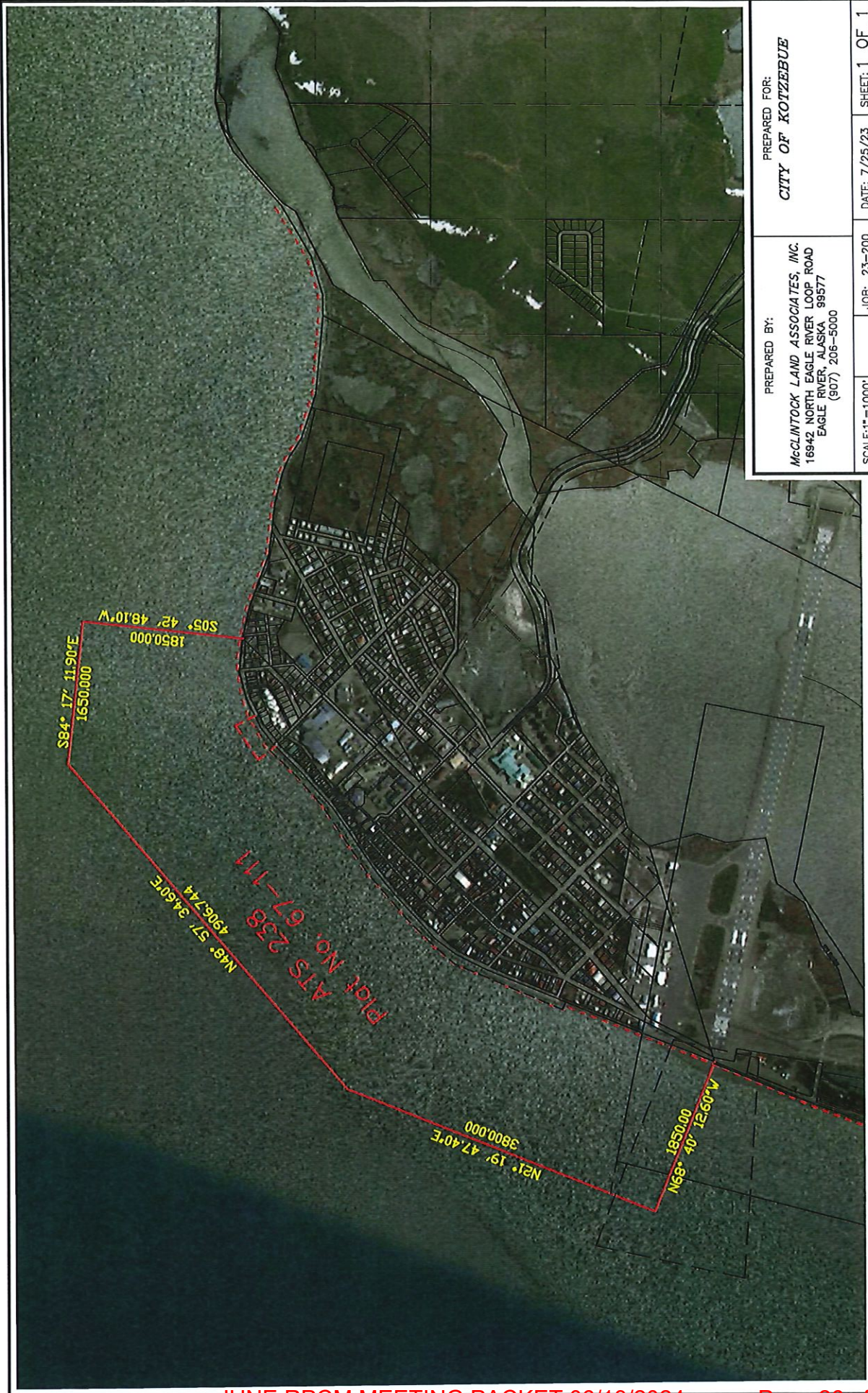
A. Permits issued shall not exceed ten years in duration, but are renewable at the option of the city.

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).



PREPARED FOR:
CITY OF KOTZEBUE

PREPARED BY:
McCLINTOCK LAND ASSOCIATES, INC.
 16842 NORTH EAGLE RIVER LOOP ROAD
 EAGLE RIVER, ALASKA 99577
 (907) 206-5000

SCALE: 1" = 1000'

JOB: 23-200

DATE: 7/25/23

SHEET: 1 OF 1



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 WLD 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.

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 <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

Hi Rachel:

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

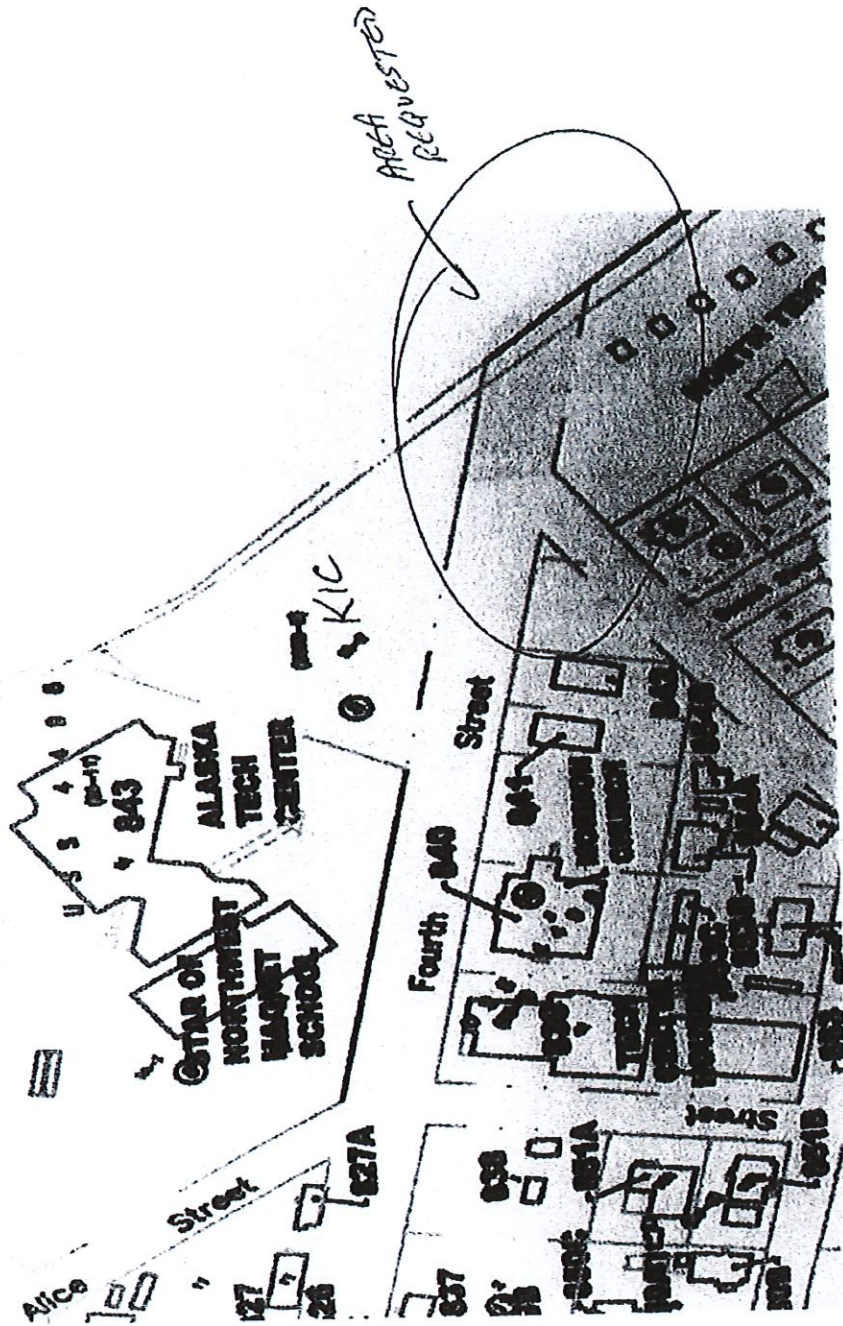
If you have any questions, please let me know.

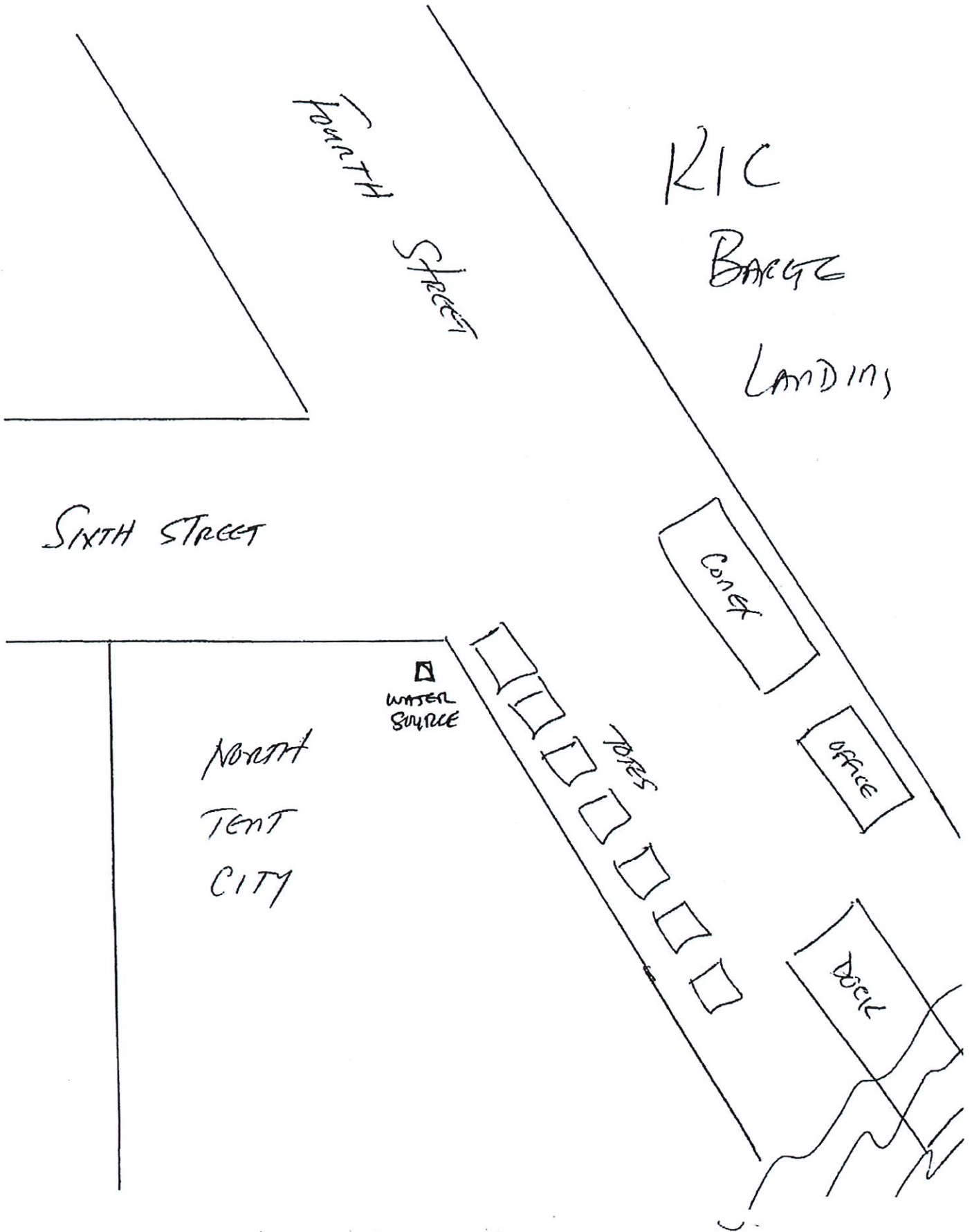
Cordially,

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

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

Alfred Smith
By: Alfred 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



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

Thu, Jul 27, 2023 at 6:43 P

Message

Evans <joe@jwevanslaw.com>
<kotzebue57@gmail.com> -<kotzebue57@gmail.com>, Nate Kolch <kolchservices@gmail.com>, Mike Scott <michael_scott@comcast.net>

late and Mike,

y 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.

lease email, text or call with any questions.

Joe Evans
(907) 981-5508 [cell]

joe@jwevanslaw.com

From: Tessa Baldwin <TBaldwin@Kotzebue.org>
Sent: Thursday, July 27, 2023 9:25 AM
To: kolchservices@gmail.com michael_scott@comcast.net kotzebue57@gmail.com michael_scott@comcast.net kotzebue57@gmail.com
Cc: Joe Evans <joe@jwevanslaw.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
58A Third Avenue
PO Box 46, Kotzebue, AK 99752
Work: 907-442-5101
Cell: 907-412-3571
Fax: 907-442-3742

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.

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.

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.
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. 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 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."

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: _____